

In the Privy Council.

ON APPEAL FROM THE SUPREME  
COURT OF CANADA.

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BETWEEN

THE GOVERNOR AND COMPANY  
OF ADVENTURERS OF ENGLAND  
TRADING INTO HUDSON'S BAY

*Appellants,*

AND

THE ATTORNEYS-GENERAL FOR  
THE DOMINION OF CANADA &  
THE PROVINCES OF MANITOBA  
SASKATCHEWAN AND ALBERTA

*Respondents.*

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RECORD OF PROCEEDINGS.

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APPELLANTS' CASE.

CASE OF THE RESPONDENTS THE ATTORNEY  
GENERAL FOR THE DOMINION OF CANADA.

CASE OF THE RESPONDENTS THE ATTORNEY  
GENERAL FOR THE PROVINCE OF MANITOBA.

RECORD.

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# In the Privy Council.

## ON APPEAL

FROM THE SUPREME COURT OF CANADA.

BETWEEN—THE GOVERNOR AND COMPANY OF  
ADVENTURERS OF ENGLAND TRADING INTO  
HUDSON'S BAY... .. APPELLANT  
AND  
THE ATTORNEYS-GENERAL FOR THE  
DOMINION OF CANADA AND THE PROVINCES  
OF MANITOBA, SASKATCHEWAN, AND  
ALBERTA ... .. RESPONDENTS.

### CASE FOR THE APPELLANT.

1.—This is an Appeal (by special leave) from a Judgment, dated the 20th April, 1927, of the Supreme Court of Canada on a Reference to the Supreme Court made by His Excellency the Governor-General of the Dominion of Canada in Council under Section 60 of the Supreme Court Act of Canada.

RECORD

2.—The question involved in this appeal is whether the precious metals in the lands granted to the Appellant by the Crown belong to the Appellant or to the Crown. No question arises between the Crown in right of the Dominion of Canada and the Crown in right of any Province.

3.—The Appellant (hereinafter called "the Company") was incorporated by 10 Royal Charter granted by His late Majesty King Charles II on the 2nd May, 1670.

4.—The Letters Patent, a copy whereof will be found in the Record, after reciting that Prince Rupert and others had undertaken an expedition for Hudson's Bay for, among other purposes, finding minerals, and had made such discoveries as encouraged them to proceed further, contained provisions to the following effect:—

(A) The Company was incorporated by name as a body corporate with perpetual succession, capable of holding and granting land, and with a common seal.

(B) Provision was then made for the management of the Company by a Governor, Deputy-Governor, Committee, and Court General.

- p. H, 1-39 77./18 (c) The Crown granted to the Company—
- p. H, 1-39 77./20 (i) “the sole Trade and Commerce of all these Seas, Streights, Bays, Rivers, Lakes, Creeks and Sounds, in whatsoever Latitude they shall be, that lie within the Entrance of the Streights commonly called Hudson’s Streights
- p. H, 1-39 77./23 (ii) “together with all the Lands and Territories upon the Countries, Coasts and Confines of the Seas, Bays, Lakes, Rivers, Creeks and Sounds aforesaid that are not already actually possessed by or granted to any of our Subjects or possessed by the Subjects of any other Christian Prince or State. 10
- p. H, 1-39 77./28 (iii) “with the Fishing of all Sorts of Fish, Whales, Sturgeons, and all other Royal Fishes, in the Seas, Bays, Inlets and Rivers within the Premises, and the Fish therein taken together with the Royalty of the Sea upon the Coasts within the Limits aforesaid
- p. H, 1-41 77./31 (iv) “and all Mines Royal, as well discovered as not discovered, of Gold, Silver, Gems, and precious Stones, to be found or discovered within the Territories, Limits, and Places aforesaid.”
- p. 12, 1-3 77./34 (D) The said land was thenceforth to be one of the Crown Colonies in America called Rupert’s Land.
- p. 12, 1-13 77./46 (E) The premises thereby granted were to be holden of the Crown as of the 20 Manor of East Greenwich in the County of Kent, in free and common socage and not in capite or by Knight’s service, at a yearly payment of two elks and two black beavers so often as the King, His Heirs and Successors, should happen to enter into the said Countries, Territories and Regions thereby granted.
- p. 13, 1-15 79./1 (F) The Crown granted to the Company not only the whole, entire and only trade and traffick, and the whole, entire and only liberty, use and privilege of trading and trafficking to and from the territory, limits and places aforesaid, but also the whole and entire trade and traffick to and from all havens, bays, creeks, rivers, lakes and seas 30 into which the Company should find entrance or passage by water or land out of the territories, limits or places aforesaid, and to and with all the natives and people inhabiting or which should inhabit within the territories, limits and places aforesaid, and to and with all other nations inhabiting any of the coast adjacent to the said territories, limits and places which were not already possessed as aforesaid, or whereof the sole liberty or privilege of trade or traffick was not granted to any other subject.
- pp. 15-16-1781/683  
p. 15, 1-6 81./28  
p. 16, 1-21 82./10  
p. 16, 1-31 82./21 (G) The Crown further granted to the Company sovereign rights over Rupert’s Land, with powers of executing justice, making peace or war with any prince or people that were not Christians, making fortifications, and other 40 powers.

5.—It is common ground that the ownership of the precious metals in Rupert’s Land remained vested in the Company until Rupert’s Land was admitted into

the Dominion of Canada, which admission was effected as stated in the following paragraphs.

RECORD

6.—By the British North America Act, 1867, section 146, it was enacted that it should be lawful for the Queen, by and with the advice of Her Majesty's Privy Council, on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-Western Territory or either of them into the Union on such terms and conditions in each case as were in the Addresses expressed, and as the Queen thought fit to approve, subject to the provisions of that Act, and that the provisions of any Order in Council in that behalf should have effect as if they had been enacted  
10 by the Parliament of the United Kingdom of Great Britain and Ireland. A copy of the material parts of the Act will be found in the Record.

p. 56 117

7.—By an Address from the Houses of the Parliament of Canada, adopted by the said Houses of Parliament on the 16th and 17th December, 1867, Her Majesty was prayed by and with the advice of Her Privy Council to unite Rupert's Land and the North-Western Territory with the Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government. By the Address representations were made that the development of the mineral wealth, which abounded in the region of the North-West, was dependent on the establishment of a stable government for the maintenance of law and order in the  
20 North-Western Territories, and that, in the event of Her Majesty's Government agreeing to transfer to Canada the jurisdiction and control over the said region, the Government and Parliament of Canada would be ready to provide that the legal rights of any corporation, company or individual within the same should be respected. A copy of the Address will be found in the Record.

pp. 84 and 85

8.—Her Majesty signified Her willingness to comply with the prayer of the Address, but was advised that the requisite powers of government and legislation could not, consistently with the existing charter of the Company, be transferred to Canada without an Act of Parliament.

87, l. 30  
p. 26, l. 10

9.—The Rupert's Land Act, 1868, was accordingly passed, a copy whereof will be  
30 found in the Record. The Act recited the Letters Patent of King Charles II and the material part of the British North America Act, 1867, and then recited as follows:—

85 to 87  
pp. 18 and 19

“And whereas for the purpose of carrying into effect the provisions of  
“the said British North America Act 1867 and of admitting Rupert's  
“Land into the said Dominion as aforesaid upon such terms as Her  
“Majesty thinks fit to approve, it is expedient that the said lands,  
“territories, rights, privileges, liberties, franchises, powers, and authorities  
“so far as the same have been lawfully granted to the said Company  
“should be surrendered to Her Majesty, Her Heirs and Successors upon  
“such terms and conditions as may be agreed upon between Her Majesty  
40 “and the said Governor and Company as hereinafter mentioned.”

10.—By the said Act it was enacted as follows:—

“2. For the purposes of this Act the term ‘Rupert's Land’ shall  
“include the whole of the lands and territories held or claimed to be held  
“by the said Governor and Company.”

p. 18 86



“ 3. It shall be competent for the said Governor and Company to  
 “ surrender to Her Majesty and for Her Majesty by an instrument under  
 “ Her Sign Manual and Signet to accept a surrender of all or any of the  
 “ lands, territories, rights, privileges, liberties, franchises, powers and  
 “ authorities whatsoever granted or purported to be granted by the said  
 “ Letters Patent to the said Governor and Company within Rupert’s  
 “ Land upon such terms and conditions as shall be agreed upon by and  
 “ between Her Majesty and the said Governor and Company ; provided  
 “ however that such surrender shall not be accepted by Her Majesty  
 “ until the terms and conditions upon which Rupert’s Land shall be 10  
 “ admitted into the said Dominion of Canada shall have been approved  
 “ of by Her Majesty and embodied in an Address to Her Majesty from  
 “ both the Houses of the Parliament of Canada in pursuance of the  
 “ 146th section of the British North America Act 1867 ; and that the  
 “ said surrender and acceptance thereof shall be null and void unless  
 “ within a month from the date of such acceptance Her Majesty does  
 “ by Order in Council under the provisions of the said last recited Act  
 “ admit Rupert’s Land into the said Dominion ; provided further that  
 “ no charge shall be imposed by such terms upon the Consolidated Fund  
 “ of the United Kingdom. 20

“ 4. Upon the acceptance by Her Majesty of such surrender all rights  
 “ of Government and Proprietary Rights, and all other Privileges,  
 “ Liberties, Franchises, Powers and Authorities whatsoever, granted or  
 “ purported to be granted by the said Letters Patent to the said Governor  
 “ and Company within Rupert’s Land, and which shall have been so  
 “ surrendered, shall be absolutely extinguished provided that nothing  
 “ herein contained shall prevent the said Governor and Company from  
 “ continuing to carry on in Rupert’s Land or elsewhere Trade and  
 “ Commerce.

“ 5. It shall be competent to Her Majesty by any such Order or 30  
 “ Orders in Council as aforesaid, on Address from the Houses of the  
 “ Parliament of Canada, to declare that Rupert’s Land shall, from a date  
 “ to be therein mentioned, be admitted into and become part of the  
 “ Dominion of Canada ; and thereupon it shall be lawful for the  
 “ Parliament of Canada from the date aforesaid to make, ordain and  
 “ establish within the Land and Territory so admitted as aforesaid all  
 “ such Laws, Institutions and Ordinances, and to constitute such Courts  
 “ and Officers, as may be necessary for the Peace, Order and Good  
 “ Government of Her Majesty’s Subjects and others therein : Provided  
 “ that, until otherwise enacted by the said Parliament of Canada, all 40  
 “ the Powers, Authorities and Jurisdiction of the several Courts of Justice  
 “ now established in Rupert’s Land and of the several Officers thereof,  
 “ and of all Magistrates and Justices now acting within the said Limits  
 “ shall continue in full force and effect therein.”

11.—So soon as the Rupert’s Land Act, 1868, was passed, the Secretary of State for the Colonies informed the Governor-General of the Dominion that in pursuance of the powers conferred by the Act for the surrender of the Company’s

territories to Her Majesty, he proposed to enter into negotiations with the Company as to the terms of such surrender. The Dominion thereupon appointed delegates to proceed to England to arrange the terms for the acquisition by Canada of Rupert's Land. p. ~~31~~<sup>32</sup>, l. 20

12.—The negotiations were conducted between the Secretary of State for the Colonies on behalf of the Crown, by the delegates on behalf of the Dominion of Canada, and by Sir Stafford Northcote, Governor of the Company, on behalf of the Company. Terms were made and were conditionally agreed by the delegates on behalf of the Government of Canada, and subsequently approved by the Governor-General of the Dominion in Council. p. ~~31~~<sup>32</sup>, l. 20

13.—The terms were contained in a letter from Sir Frederic Rogers, Under-Secretary of State for the Colonies, of the 9th March, 1869, as modified by two memoranda dated the 22nd and 29th March, 1869. Copies of the letter and memoranda will be found in the Record. pp. ~~27~~<sup>28</sup> to ~~29~~<sup>30</sup>

14.—The material articles of the terms stated in the letter from Sir Frederic Rogers are as follows:— pp. ~~27~~<sup>28</sup> and ~~28~~<sup>29</sup>

“ 1. The Company to surrender to Her Majesty all the rights of government, property, etc., in Rupert's Land which are specified in “ 31 & 32 Vict. cap. 105 ” (The Rupert's Land Act, 1868) “ section 4, “ and also all similar rights in any other part of British North America “ not comprised in Rupert's Land, Canada, or British Columbia.

“ 3. The Company may, within twelve months of the surrender, “ select a block of land adjoining each of its stations within the limits “ specified in Article 1.

“ 4. The size of the blocks not to exceed                      acres in the Red “ River Territory, and the aggregate extent of the blocks is not to exceed “ 50,000 acres.

“ 6. The Company may, for fifty years after the surrender, claim in “ any township or district within the Fertile Belt in which land is set “ out for settlement select grants of land not exceeding one-twentieth “ of the land so set out. The blocks so granted to be determined by lot “ and the Company to pay a rateable share of the survey expenses not “ exceeding                      an acre.

“ 7. For the purpose of the present agreement the Fertile Belt is “ to be bounded as follows:—on the south by the United States boundary ; “ on the west by the Rocky Mountains ; on the north by the northern “ branch of the Saskatchewan ; on the east by Lake Winnipeg, the “ Lake of the Woods, and the waters connecting them.

“ 8. All titles to land up to the 8th March 1869 conferred by the “ Company are to be confirmed.

“ 12. The details of this arrangement, including the filling up the “ blanks in Articles 4 and 6 to be settled at once by mutual agreement.”

pp. <sup>89</sup>~~28~~ and <sup>90</sup>~~29~~

15.—The material parts of the memorandum of the 22nd March, 1869, are as follows :—

“ 1. It is understood that in surrendering to Her Majesty all the rights etc. of the Company in any part of British North America not comprised in Rupert's Land, Canada, or British Columbia the Company are to retain the posts they actually occupy in the North West Territory.

“ 2. It is understood that it will be a sufficient act of selection under Article III that the Company should, within twelve months, name the number of acres which they will require adjoining each post. The actual survey to be proceeded with with all convenient speed. 10

“ 3. It is understood that in the Red River Settlement the size of the blocks to be retained round Upper Fort Garry shall not exceed (10) acres and that round Lower Fort Garry shall not exceed (300) acres.

“ 4. It is understood that a list of the stations round which the Company will require blocks of land with the size of the blocks they will require, shall be made out forthwith and communicated to the Canadian Ministers.

“ 6. It is understood that the Company may defer the exercise of their right of claiming their proportion of each township for not more than ten years after it is set out, but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it. 20

p. ~~29~~ 90

16.—The material parts of the memorandum of the 29th March, 1869, are as follows :—

“ Inasmuch as the northern branch of the Saskatchewan River is the northern boundary of the Fertile Belt and therefore any land on the northern bank is not within the territory of which the Company are to have one-twentieth part, it is understood that, in forming the townships abutting on the northern bank, the Company shall be at liberty to take their one-twentieth of any such townships, giving up to the Canadian Dominion an equal quantity of the portion of lands coming to them of townships established on the southern bank. 30

“ It is understood that the townships on the northern bank shall not for the above purpose extend more than five miles inland from the river.”

17.—By a second Address from the Houses of the Parliament of Canada, adopted by the said Houses of Parliament on the 29th and 31st May, 1869, Her Majesty was prayed by and with the advice of Her Privy Council under the 146th section of the British North America Act, 1867, and the provisions of the Rupert's Land Act, 1868, to unite Rupert's Land on the terms and conditions expressed in the Resolutions incorporated in the Address and mentioned in the next paragraph hereof, and also to unite the North-Western Territory with the Dominion of Canada as prayed for by and on the terms and conditions contained in the first Address. A copy of the second Address will be found in the Record. 40

pp. <sup>91</sup>~~30~~ to <sup>93</sup>~~32~~



18.—The Resolutions were resolutions of the Houses of the Parliament of Canada and a copy thereof will be found in the Record. After stating the presentation of the first Address and the subsequent matters hereinbefore set out other than the presentation of the second Address, it was resolved that the Senate would be prepared to concur in accepting the transfer of the territorial and other rights of the Company in Rupert's Land and in any other part of British North America not comprised in Rupert's Land, Canada, or British Columbia on the terms of the letter from Sir Frederic Rogers as modified by the two memoranda.

pp. 25 to 3087 to 91

88.1.18  
p. 26, 1.38

19.—The Resolutions included a resolution for the presentation of the second Address and a final resolution that the Governor in Council be authorised and empowered to arrange any details that might be necessary to carry out the terms and conditions of the above agreement.

p. 30, 1.791.18

p. 30, 1.2091.23

20.—On the 19th November, 1869, a Deed of Surrender by the Company to the Crown was executed, and it is as to the true construction and effect of this deed that the questions involved in this Appeal mainly arise. A copy of the deed will be found in the Record.

pp. 33 to 4194 to 102

21.—The deed of surrender recited as follows:—

(A) The Letters Patent.

p. 33, 1.804.19

20 (B) “ And whereas ever since the date of the said Letters Patent the said Governor and Company have exercised and enjoyed the sole right thereby granted of such trade and commerce as therein mentioned and have exercised and enjoyed other rights, privileges, liberties, franchises, powers and authorities thereby granted and the said Governor and Company may have exercised or assumed rights of Government in other parts of British North America not forming part of Rupert's Land or of Canada or of British Columbia.”

1.2728

(C) Section 146 of the British North America Act, 1867.

p. 33, 1.3394.36

(D) The Rupert's Land Act, 1868.

p. 34, 1.194.44

30 (E) “ And whereas Her said Majesty Queen Victoria and the said Governor and Company have agreed to terms and conditions upon which the said Governor and Company shall surrender to Her said Majesty, pursuant to the provisions in that behalf in the Rupert's Land Act 1868 contained, all the rights of Government and other rights, privileges, liberties, franchises, powers and authorities, and all the lands and territories (except and subject as in the said terms and conditions expressed or mentioned) granted or purported to be granted by the said Letters Patent and also all similar rights which have been exercised or assumed by the said Governor and Company in any parts of British North America not forming part of Rupert's Land or of Canada, or of British Columbia in order and to the intent that, after such surrender has been effected and accepted under the provisions of the last mentioned Act, the said Rupert's Land may be admitted into the Union of the Dominion of Canada pursuant to the hereinbefore mentioned Acts or one of them.

p. 34, 1.2295.23

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p. 34, l. 35-95. / 38

“ And whereas the said terms and conditions on which it has been  
 “ agreed that the said surrender is to be made by the said Governor and  
 “ Company (who are in the following Articles designated as the Company)  
 “ to Her Majesty are as follows (that is to say) :—

p. 35, l. 1-95. / 45

\* \* \* \* \*

“ 2. The Company to retain all the posts or stations now actually  
 “ possessed and occupied by them or their officers or agents whether in  
 “ Rupert's Land or any other part of British North America and may  
 “ within twelve months after the acceptance of the said surrender select  
 “ a block of land adjoining each of their posts or stations within any part  
 “ of British North America not comprised in Canada and British Columbia 10  
 “ in conformity, except as regards the Red River Territory, with a list  
 “ made out by the Company and communicated to the Canadian Ministers,  
 “ being the list in the annexed schedule. The actual survey is to be  
 “ proceeded with with all convenient speed.

p. 35, l. 1-10 96. / 8

“ 3. The size of each block is not to exceed in the Red River Territory  
 “ an amount to be agreed upon between the Company and the Governor  
 “ of Canada in Council.

p. 35, l. 1-16 96. / 15

\* \* \* \* \*

“ 5. The Company may, at any time within fifty years after such  
 “ acceptance of the said surrender, claim in any township or district  
 “ within the fertile belt ” (defined in Article 6 as previously defined in 20  
 “ the letter from Sir Frederic Rogers in paragraph 14 hereof) “ in which  
 “ land is set out for settlements, grants of land not exceeding one-twentieth  
 “ part of the land so set out : the blocks so granted to be determined  
 “ by lot, and the Company to pay a rateable share of the survey expenses,  
 “ not exceeding 8 cents Canadian an acre. The Company may defer  
 “ the exercise of their right of claiming their proportion of each township  
 “ or district for not more than ten years after it is set out but their claim  
 “ must be limited to an allotment from the lands remaining unsold at the  
 “ time they declare their intention to make it.

p. 36, l. 1-10 97. / 4

\* \* \* \* \*

“ 10. All titles to land up to the 8th day of March 1869, conferred 30  
 “ by the Company, are to be confirmed.

p. 36, l. 1-25 97. / 21

\* \* \* \* \*

“ And whereas the surrender hereinafter contained is intended to  
 “ be made in pursuance of the agreement and upon the terms and  
 “ conditions hereinbefore stated.”

22.—The operative part of the deed of surrender was as follows :—

p. 36, l. 1-27 97. / 24

“ Now know ye and these presents witness that in pursuance of the  
 “ powers and provisions of the ‘ Rupert's Land Act 1868 ’ and on the  
 “ terms and conditions aforesaid and also on condition of this surrender  
 “ being accepted pursuant to the provisions of that Act the said Governor  
 “ and Company do hereby surrender to the Queen's Most Gracious 40  
 “ Majesty all the rights of government and other rights, privileges,

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“liberties, franchises, powers and authorities, granted or purported to be granted to the said Governor and Company by the said recited Letters Patent of His late Majesty King Charles the Second and also all similar rights which may have been exercised or assumed by the said Governor and Company in any parts of British North America not forming part of Rupert's Land or of Canada or of British Columbia and all the lands and territories within Rupert's Land (except and subject as in the said terms and conditions mentioned) granted or purported to be granted to the said Governor and Company by the said Letters Patent.”

23.—The Schedule annexed to the deed of surrender contained a list of the Company's posts or stations in the Northern, Southern, and Montreal Departments of Rupert's Land and in the Northern Department of the North-west Territory with, opposite each post or station, the number of acres in the block of land adjoining such post or station to be selected by the Company. The aggregate number of acres provided for in the list was 45,160. pp. ~~37 to 41~~ 198/102

24.—The surrender was duly accepted by Her Majesty by an instrument under Her Sign Manual and Signet bearing date at Windsor the 22nd June, 1870. p. ~~22, l. 14~~ 105/1

20 25.—By an Order in Council made on the 23rd June, 1870, Rupert's Land was admitted into and became part of the Dominion of Canada. A copy of the Order will be found in the Record. pp. ~~20 to 41~~ 102/106

26.—The Order in Council recited as follows :—

- (A) Section 146 of the British North America Act, 1867. p. ~~20, l. 11~~ 102/35
- (B) The first Address. p. ~~20, l. 20~~ 103/9
- (C) The Rupert's Land Act, 1868. p. ~~20, l. 26~~ 103/17
- (D) The second Address. p. ~~21, l. 5~~ 103/38
- (E) That a draft surrender had been submitted to the Governor-General of Canada containing three stipulations to the effect therein set out. p. ~~21, l. 14~~ 104/1
- 30 (F) That the said draft was on the 5th July, 1869, approved by the said Governor-General in accordance with a Report from the Committee of the Queen's Privy Council for Canada ; but it was not expedient that the said stipulations, not being contained in the second Address, should be included in the surrender or in the Order in Council. p. ~~21, l. 37~~ 104/27
- (G) The deed of surrender. p. ~~22, l. 3~~ 104/34
- (H) The acceptance of the surrender. p. ~~22, l. 14~~ 105/1

27.—The Order in Council then proceeded as follows :—

40 “And it is hereby Ordered and declared by Her Majesty, by and with the advice of the Privy Council, in pursuance and exercise of the powers vested in Her Majesty by the said Acts of Parliament, that from and after the 15th day of July 1870 the said North-Western Territory shall be admitted into and become part of the Dominion of Canada upon the terms and conditions set forth in the first hereinbefore recited p. ~~22, l. 17~~ 105/5



## RECORD

“ Address and that the Parliament of Canada shall from the day aforesaid  
 “ have full power and authority to legislate for the future welfare and  
 “ good government of the said Territory. And it is further ordered that,  
 “ without prejudice to any obligations arising from the aforesaid approved  
 “ Report, Rupert's Land shall from and after the said date be admitted  
 “ into and become part of the Dominion of Canada upon the following  
 “ terms and conditions being the terms and conditions still remaining  
 “ and to be performed of those embodied in the said second Address of  
 “ the Parliament of Canada and approved by Her Majesty as aforesaid.”

28.—The Order in Council then set out the terms and conditions upon which 10  
 Rupert's Land was admitted into and became part of the Dominion of Canada.  
 The terms and conditions were the same as in the deed of surrender save that  
 Article 3 was in a different form, and a further Article, number 15, was added, as  
 follows :—

p. 22, 1. 40. 105. 131

“ 3. The size of each block is not to exceed (10) acres round Upper  
 “ Fort Garry, (300) acres round Lower Fort Garry ; in the rest of the  
 “ Red River Territory a number of acres to be settled at once between  
 “ the Governor in Council and the Company but so that the aggregate  
 “ extent of the blocks is not to exceed 50,000 acres.

\* \* \* \* \*

“ 15. The Governor in Council is authorised and empowered to 20  
 “ arrange any details that may be necessary to carry out the above terms  
 “ and conditions.”

121 to 157

pp. 62 to 63

29.—Article 5 of the said terms and conditions, which provided for the  
 determination by lot of the Company's one-twentieth in townships and districts  
 in the fertile belt, was subsequently varied by agreement between the Company  
 and the Dominion, and such agreement was embodied in the Dominion Lands  
 Act, 1872, a copy of which Act will be found in the Record.

30.—Sections 17 to 21 of the Act constitute a fasciculus of clauses headed  
 “ Lands reserved by the Hudson's Bay Company,” and provide as follows :—

p. 66, 1. 21. 126. 1. 6

(A) By section 17, after reciting Article 5 and that the Company and the 30  
 Government of the Dominion of Canada had mutually agreed that, with  
 a view to an equitable distribution throughout the territory of the  
 Company's one-twentieth under Article 5, and in order to simplify the  
 setting apart thereof, certain sections or parts of sections, alike in number  
 and position in each township, should, as the townships were surveyed,  
 be set apart and designated to meet and cover such one-twentieth, it  
 was enacted that in each township (except in the cases thereafter  
 provided for) fixed and certain sections and parts of sections should be  
 known and designated as the lands of the Company.

p. 67, 1. 14. 126. 1. 36

(B) By Section 18 it was provided that Section 17 should not apply to fractional 40  
 townships or to townships broken by lakes, but only to whole townships,  
 and that in the excepted cases the Company's one-twentieth should be set  
 apart by lot.

(c) By Section 19 it was further provided that on the survey of a township being effected, should the sections so allotted or any of them or any portion of them be found to have been *bona fide* settled on under the authority of any Order in Council or of that Act, then, if the Company should forego its right to the sections settled upon as aforesaid or any one or more of such sections, the Company should have the right to select a quantity of land equal to that so settled on and in lieu thereof from any lands then unoccupied. p. 67, 1-10/26. 1.42

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(D) By Section 20 it was also provided that, as regarded the sections and parts of sections as mentioned in Clause 17, where the same might be situate in any township withdrawn from settlement and sale, and held as timber lands under the provisions thereafter contained, the same should form no part of the timber limit or limits included in such townships, but should be held to be the property of the Company. p. 67, 1-25/27. 1.7

(E) By Section 21 it was provided as follows :—

20

“ 21. As townships are surveyed and the respective surveys thereof confirmed or as townships or parts of townships are set apart and reserved from sale as timber lands, the Governor of the Company shall be duly notified thereof by the Surveyor-General and thereupon this Act shall operate to pass the title in fee simple in the sections or three-quarter parts of sections to which the Company will be entitled under Clause 17 as aforesaid and to vest the same in the said Company without requiring a patent to issue for such lands ; and as regards the lands set apart by lot, and those selected to satisfy the one-twentieth in townships other than the above, as provided in Clauses 18 and 19, returns thereof shall be made in due course by the Local Agent or Agents in the Dominion Lands Office and patents shall issue for the same accordingly.”

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31.—By the Dominion Lands Act, 1874, Section 18 of the Act of 1872 was repealed and a new section was substituted in its place, and Section 20 of the Act of 1872 was amended. A copy of the material parts of the Act of 1874 will be found in the Record. The clauses as so altered and amended appear substantially in the same form in the consolidating statutes of 1879, 1886, 1906 and 1908. Copies of the material parts of these consolidating statutes will be found in the Record.

157 to 159  
pp. 93 and 94

159 to 178  
pp. 95 to 105

32.—Rupert's Land now forms part of the North-West Territories, Manitoba, Saskatchewan and Alberta, as follows :—

40

(A) By the Manitoba Act, 1870, the Province of Manitoba was constituted out of part of Rupert's Land and part of the North-Western Territory, and the remainder of Rupert's Land and the North-Western Territory became the North-West Territories. The Act repeated the Article 10 of the terms and conditions above set out that all titles to land conferred by the Company up to the 8th March, 1869, should be confirmed. The Act also provided that nothing in the Act should in any way prejudice or affect the rights or properties of the Company as contained in the conditions under which the Company surrendered Rupert's Land to Her Majesty. A copy of the material parts of the Act will be found in the Record.

p. 56 118

## RECORD

- (B) In 1905 the Provinces of Saskatchewan and Alberta were constituted out of the North-West Territories, including part of what was formerly Rupert's Land, by the Saskatchewan Act and the Alberta Act respectively, each of which Acts provide that nothing in the Act should in any way prejudice or affect the rights or properties of the Company as contained in the conditions under which the Company surrendered Rupert's Land to Her Majesty. Copies of the material parts of the Acts will be found in the Record.

pp. ~~58 to 60~~ 169 to 171

33.—The course of the Dominion legislation with regard to precious metals in Dominion lands is as follows:—

10

- (A) The Dominion Lands Act, 1872, enacted as follows:—

p. ~~78~~ 134

“ 36. No reservation of gold, silver, iron, copper, or other mines  
“ or minerals shall be inserted in any patent from the Crown granting  
“ any portion of the Dominion lands.”

p. ~~97~~ 162

- (B) In the Dominion Lands Act, 1879, a consolidating statute, Section 36 appeared verbatim as Section 37.

p. ~~100~~ 165

- (C) An amending Act of 1880 repealed Section 37 of the Act of 1879, along with other sections, and substituted the following section for the sections so repealed:—

“ Lands containing coal or other minerals, whether in surveyed or 20  
“ unsurveyed territory, shall not be subject to the provisions of this Act  
“ respecting sale or homestead but shall be disposed of in such manner  
“ and on such terms and conditions as may from time to time be fixed  
“ by the Government in Council by regulations to be made in that behalf  
“ which regulations shall not go into operation until after they shall have  
“ been published for four successive weeks in the Canada Gazette and laid  
“ before both Houses of Parliament for thirty days without disapproval  
“ by either House.”

- (D) In the consolidating statute of 1883 a new section appears as follows:—

“ 43. It is hereby declared that no grant from the Crown of lands in 30  
“ freehold or for any less estate has operated or will operate as a conveyance  
“ of the gold and silver mines therein unless the same are expressly  
“ conveyed in such grant.”

p. ~~102~~ 169

- (E) This section appeared in the consolidating statute of 1886 in the following form:—

“ 48. No grant from the Crown of lands in freehold or for any less  
“ estate shall be deemed to have conveyed or to convey the gold or silver  
“ mines therein unless the same are expressly conveyed in such grant.”

p. ~~104~~ 175

- (F) This section was repeated in the subsequent revision of 1906 as Section 161.

40

- (G) In the next consolidation of 1908, however, the section wholly disappears and has never since been revived.

34.—In the circumstances above set out disputes arose between the Company and the Government of the Dominion of Canada as to the ownerships of the precious metals, gold and silver, in and under the Company's lands.



35.—By Orders of the Governor-General of the Dominion in Council made on the 26th January and the 12th October, 1926, the following questions were referred to the Supreme Court of Canada for hearing and consideration under the authority of Section 60 of the Supreme Court Act, Chapter 139 of the Revised Statutes of Canada, that is to say :—

1. In whom, after the acceptance of the said surrender and the passing of the said Order in Council of the 23rd day of June, 1870, were vested the precious metals, gold and silver, in, under or upon the lands in the said area possessed and occupied at the date of the said surrender as posts or stations by the Company, its officers or agents, whether in the Crown represented by the Dominion of Canada or in the Company ?

2. In whom were vested the precious metals, gold and silver, in, under or upon the blocks of land adjoining the said posts or stations of the Company, and selected by the Company whether in the Crown represented by the Dominion of Canada or in the Company

- (a) upon the selection by the Company of the said blocks of land,
- (b) upon the issue to the Company of the Crown patents for the said blocks of land ?

3. In whom were vested the precious metals, gold and silver, in, under or upon the sections of land or parts thereof in the said fertile belt which were vested in the Company by notification upon such notification, whether in the Crown represented by the Dominion of Canada or in the Company ?

4. In whom were vested the precious metals, gold and silver, in, under or upon the land granted to the Company by letters patent from the Crown upon the issue thereof :—

- (a) in satisfaction of the Company's one-twentieth of the land in fractional townships or in townships broken by lakes,
- (b) in lieu of lands allotted to the Company but found to be settled upon.

5. In whom were vested the precious metals, gold and silver, in, under or upon the lands granted to the Company by letters patent in lieu of land in which the Company relinquished and surrendered its rights to the Crown upon the issue of such patents ?

6. In whom were vested the precious metals, gold and silver, in, under or upon the land granted to the Company by letters patent in lieu of land conveyed by the Company to the Crown upon the issue of such patents ?

7. If in any of such cases the precious metals, gold and silver, were vested in the Company, did the repeal of Section 37 of the Dominion

RECORD  
—

**Lands Act, 1879 (Chapter 31 of 42 Victoria), by Section 6 of Chapter 26 of 43 Victoria, or the enactment of Section 43 of Chapter 17 of 46 Victoria, or of the Dominion Lands Act (Chapter 20 of 7 and 8 Edward VII), or any other enactment affect the ownership of the said precious metals in such case ?**

p. 407 10

36.—By the said Order of the 12th October, 1926, it was declared that it was not intended by the reference to raise any issues as between the Dominion and any Province and that, so far as any lands in the Province of Manitoba were concerned, questions numbers 1, 2 and 3 might be answered as if the words “represented by the Dominion of Canada,” where they occurred after the word “Crown” in each of the said questions, were struck out, and that in answering any of the questions referred it would be sufficient to state what were the rights of the Crown and the Company respectively without indicating whether any of the rights of the Crown were vested in the Dominion or the Province. 10

p. 52 6

37.—By an Order of the Supreme Court made on the 20th February, 1926, upon an application for directions, it was ordered that the Solicitors for the Company and the Attorneys-General of the Provinces of Ontario, Quebec, Alberta, Saskatchewan, British Columbia and Manitoba be notified of the hearing of the argument of the Case, and that the Attorney-General of Canada, the Company, and the Attorneys-General of the Provinces therein aforesaid be at liberty to file 20 factums and to appear upon the argument of the said reference.

p. 52 11

38.—By a further Order of the Supreme Court made on the 15th January, 1927, upon an application for directions, it was ordered that the case be inscribed for hearing and that the solicitors for the Company and the Attorneys-General of the Provinces of Manitoba, Alberta, and Saskatchewan be notified of the hearing, and that the Attorney-General of Canada, the Company, and the Attorneys-General of the Provinces of Manitoba, Alberta and Saskatchewan be at liberty to file factums and to appear upon the argument of the reference.

pp.

39.—Factums were filed by the Company and by the Attorneys-General for the Dominion of Canada and the Provinces of Manitoba and Saskatchewan. The 30 Attorney-General for the Province of Alberta did not file a factum.

40.—The reference came on for hearing before the Supreme Court (Anglin C.J., Duff, Mignault, and Rinfret JJ., and Maclean J., *ad hoc*) on the 1st February, 1927, and the hearing was continued and concluded on the following day. The Company and the Attorneys-General for the Dominion of Canada and the Provinces of Manitoba and Saskatchewan appeared on the hearing. The Attorney-General for the Province of Alberta did not appear on the hearing, but left his case in the hands of the Attorney-General for the Dominion. At the conclusion of the hearing judgment was reserved.

41.—Judgment was delivered on the 20th April, 1927, answering all the 40 Questions 1 to 6 inclusive by the words “In the Crown,” and Question 7 by the words “The hypothesis of this question does not arise.” A copy of the formal

Judgment will be found in the Record. The reasons for the opinion of the Court p. 56 were delivered by Anglin C.J., and a copy of the Reasons will be found in the pp. Record.

42.—The grounds upon which the Supreme Court proceeded were briefly these :—

- (A) Subject to the possible effect of subsequent legislation the solution of the questions depended upon the construction of the terms of the deed of surrender.
- 10 (B) In approaching this problem of construction it was of vital moment that the purpose and object of the agreement, in pursuance of which the surrender was made, should be well in mind, in order that the deed might be given the scope and meaning that would best carry into effect the intent with which it was made.
- 20 (C) A Company which had theretofore owned territories having the extent of a vast empire, which had throughout those territories enjoyed the widest powers of government and administration, together with rights and prerogatives that usually appertain to a sovereign state, and which had been accorded the Royal prerogative of taking the Royal fish in the water within and contiguous to its territories, and also the Royal prerogative of owning and exploiting the Royal mines within such territories, was surrendering to the Crown all these powers, rights and franchises, as well as its proprietary rights in order to pave the way for the transfer by Her Majesty of the fullest rights of government and administration over and ownership of the territory in question to the new Dominion of Canada.
- 30 (D) The Company as an instrument of government was to pass from the scene and was thereafter to carry on solely as a trading corporation, holding its trading posts and stations with immediately adjacent parcels of land needed for their proper conduct, and receiving as part consideration for the surrender a right to parcels of land in the so-called fertile belt.
- (E) Whatever reasons there might have been for the original grant to the Company of Royal prerogative rights ceased to exist on the acceptance of the surrender.
- (F) These were the salient features of the arrangement pursuant to which the deed of surrender was made.
- (G) Turning to the operative part of the deed of surrender and reading it for the moment as if it did not contain the words in brackets “(except “and subject as in the said terms and conditions mentioned),” the generality of the language was unrestricted and was apt and sufficient to carry as *partes soli* the precious metals in the lands surrendered.
- 40 (H) But while that might be so as to the surrendered lands in which the Company ceased to have any further interest, it was contended on the Company's behalf that in the lands “retained” by it as posts or stations and in those to be “selected” as adjacent blocks and also in the lands agreed to be granted to it as part consideration for the surrender to the



Crown, its estate and interest (including the ownership of the previous metals therein) was still the same as that which it formerly held in all the territory of Rupert's Land under the Royal Charter of 1670.

- (I) These particular lands, it was argued, did not pass from the Company by the surrender, but were excepted from it, and much emphasis was placed on the words "(except and subject as in the said terms and conditions mentioned)."
- (J) After reading Articles 2, 5 and 6 of the terms and conditions, the Court said that the word "retain" in Article 2 no doubt signified that the particular property to which it referred remained with the Company and 10 did not form part of the property surrendered.
- (K) The Court was, however, dealing with an exception in a transfer to the Crown, and, because it was an exception, it should be taken most strongly against the party for whose benefit it was introduced, and the circumstance that the exception occurred in a transfer of property to the Crown by no means weakened the case for the application of this ordinary rule of construction.
- (L) The apparent purpose of the exception would be fully met if its operation were restricted to the buildings used as posts and stations (including out-houses, etc.), and in the lands they occupied the fee simple which the 20 subject ordinarily held.
- (M) Ownership of the precious metals could not be regarded from any point of view as necessary to the fullest use and enjoyment of the posts or stations for the trading purposes to which the future activities of the Company were to be confined.
- (N) The exception should be held not to include the precious metals in the excepted lands. These were left to pass under the general terms of the surrender to the Crown.
- (O) In the case of the lands to be "selected" and the parcels of which the Company was to become entitled to "claim grants," the intent of the 30 instrument would rather seem to be that these lands were to pass to Her Majesty under the general surrender. Upon re-grant or re-transfer, however effected, precious metals in the lands would not pass unless specifically mentioned.
- (P) It was scarcely possible to conceive that it had been intended that here and there throughout the great territory which it was acquiring the Dominion of Canada should find numerous sections of land in which the prerogative right of the Crown to precious metals had been relinquished in favour of a purely trading Company.
- (Q) With regard to the effect of subsequent Canadian legislation, the direction 40 contained in Section 36 of the Dominion Lands Act, 1872, and repeated in Section 37 of the Dominion Lands Act, 1879, that no reservation of gold, silver, iron, copper or other mines or minerals should be inserted in any patent from the Crown granting any portion of the Dominion lands was not tantamount to an affirmative enactment that the Crown's

right to gold and silver should pass by every such grant. The direction for the omission of any reservation of gold and silver may have been inofficious. It was quite probable that it did not occur to anybody at the time that the presence in the sections of the words "gold" and "silver" might give rise to such a contention as that then being put forward.

43.—The Company humbly submits that the opinion of the Supreme Court is erroneous in the following, among other, respects:—

- 10 (A) In cases of construction the object of the Court is to ascertain not the intention simply, but the expressed intention of the parties or, which is the same thing, the meaning which the words, properly interpreted, convey. In this case the Supreme Court disregarded this primary rule and placed undue weight upon the assumed intention of the parties.
- 20 (B) The Supreme Court misapplied the rule of construction that an exception should be taken most strongly against the party for whose benefit the exception is introduced. The rule does not mean that words should be twisted out of their proper meaning, but that, where the words may properly bear two meanings, and where, after all admissible evidence, whether extrinsic or intrinsic, has been applied, it still remains uncertain in which of those two meanings the words were used, the meaning most disadvantageous to the person who uses them is to be taken unless so doing would work a wrong.
- (C) The exception should be construed by reference to "the terms and conditions." Article 2 of the terms and conditions stated that the Company is to "retain" its posts and stations. The posts and stations accordingly never passed under the surrender, and the precious metals therein remained in the Company.
- 30 (D) The Company's title to the precious metals under the original Charter was independent of its title to the lands, and on surrender, the lands surrendered were the lands granted by the original Charter, and the Surrender did not comprise the precious metals in any part of the lands originally granted.
- (E) With regard to the lands to be selected by the Company under the terms and conditions, these lands are in lieu of the lands surrendered. The Company should accordingly have the same estate in the substituted lands as in the lands surrendered.
- 40 (F) Rules of construction applicable to present grants are equally applicable to grants to take effect in the future, and, if there is a doubt whether the precious metals are to be included in the lands to be selected by or granted to the Company, the rule of construction should be applied in favour of the Company as grantee and against the Crown as grantor.
- (G) The Supreme Court gave undue weight to its conclusion "it is scarcely possible to conceive that it was intended that here and there throughout the great territory which it was acquiring the Dominion of Canada should find numerous sections of land in which the prerogative right

“of the Crown to precious metals had been relinquished in favour of a  
“purely trading company.”

- (H) This conclusion in itself is erroneous, for Article 10 of the terms and conditions provided that all titles to land conferred by the Company up to the 8th March, 1869, were confirmed. This confirmation of titles was affirmed in the Order in Council of the 23rd June, 1870, and again in the Manitoba Act, 1870. The precious metals in lands held under titles conferred by the Company before the 8th March, 1869, were not included in the surrender, and accordingly remained outstanding.
- (I) The Supreme Court took a wrong view of the effect of Section 36 of the 10  
Dominion Lands Act, 1872, repeated as Section 37 of the Dominion Lands Act, 1879. The sections make no distinction between precious metals and base metals, and accordingly, precious metals pass with base metals under a patent.

44.—The Company humbly submits that the Judgment of the Supreme Court is wrong and ought to be reversed for the following, among other

### REASONS.

1. Because upon the true interpretation of the Deed of Surrender having regard to all the surrounding circumstances the precious metals under the lands referred to in questions one to six were 20  
at all material times vested in the Hudson's Bay Company.
2. Because the exceptions in the recital to the Deed of Surrender applied equally to the posts, to the blocks of land adjoining the posts, and to the land in the fertile belt.
3. Because neither the rights nor the lands surrendered included the precious metals.
4. Because by the express terms and conditions of the Deed of Surrender the Company “retained” its posts and stations and therefore retained the precious metals thereunder, which at the time were merged in the said posts. 30
5. Because in the absence of any words expressing a contrary intention the true inference is that the Company's estate in the posts in the adjoining blocks of land and in the lands in the fertile belt was the same.
6. Because it is evident from the terms of the Patents issued for a block adjoining a post (*see Appellant's Factum*, page 9) that the Company's title thereto was regarded as the same as its title to the adjoining post.



7. Because the title to and extent of the land excepted out of the land surrendered was determined at the date of the Deed of Surrender and the provisions for effecting the exception did not affect such title or extent.
8. Because it was one of "the terms and conditions" of the surrender that all titles conferred by the Company up to the 8th March, 1869, were confirmed.
9. Because the Agreement whereby the Company agreed to vary the terms of the Deed of Surrender relating to lands in the Fertile Belt was made upon the basis of Section 36 of the Dominion Lands Act of 1872 which expressly provided that no reservation of precious or other metals should be inserted in any patent from the Crown.
10. Because the repeal of the said Section 36 by the Act of 1880 (43 Vict. C. 26 Can.) and the provisions of Section 43 of the Act of 1885 (46 Vict. C. 17 Can.) cannot affect the said agreement or the terms and conditions of the Deed of Surrender which have the force of an Imperial Statute pursuant to Section 146 of the British North America Act, 1867.

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JOHN SIMON.  
GEOFFREY LAWRENCE.  
HUGH C. BISCHOFF.

In the Privy Council.

**ON APPEAL**  
**FROM THE SUPREME COURT OF**  
**CANADA.**

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BETWEEN

THE GOVERNOR AND COMPANY OF  
ADVENTURERS OF ENGLAND TRADING  
INTO HUDSON'S BAY ... APPELLANT

—AND—

THE ATTORNEYS-GENERAL FOR THE  
DOMINION OF CANADA AND THE  
PROVINCES OF MANITOBA, SASKAT-  
CHEWAN AND ALBERTA ... RESPONDENTS.

---

**CASE FOR THE APPELLANT.**

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BISCHOFF, COXE, BISCHOFF & THOMPSON  
4 Great Winchester Street, E.C.2,  
*Solicitors for the Appellant*

ON APPEAL

FROM THE SUPREME COURT OF CANADA.

---

BETWEEN

THE GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND TRADING INTO HUDSON'S BAY - - - - - *Appellants*

AND

THE ATTORNEYS-GENERAL FOR THE DOMINION OF CANADA AND THE PROVINCES OF MANITOBA, SASKATCHEWAN AND ALBERTA - *Respondents.*

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CASE OF RESPONDENT THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA.

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1. This is an appeal by special leave from a unanimous judgment of the Supreme Court of Canada, delivered by Anglin, C.J. (concurring in by Duff, Mignault, Rinfret and Maclean, JJ.) on a reference to that Court by the Dominion Government, of certain questions concerning the ownership of precious metals, gold and silver in certain lands in Canada, belonging to Appellant. RECORD. p. 56.

2. The Order in Council providing for the Reference states that the Government and Appellant have agreed that it was advisable to refer these questions to the Supreme Court of Canada, in the form and manner set out in an attached document marked "A" which contains a statement of the facts of the case and the questions to be submitted, as agreed upon between the parties. p. 1. pp. 2 & 9.

Before proceeding to summarize this document marked "A" and the schedules annexed thereto, it may be useful, for the better understanding of the statement of facts, to state that all the questions deal with the controversy as to ownership of these precious metals as between the Crown



RECORD. and the Company, any question of ownership as between the Dominion  
p. 10, l. 22. and the Provinces being excluded.

3. The facts, as they appear from the document marked "A" and the schedules annexed thereto, may be summed up as follows:—

p. 72.

By Letters Patent granted by His Late Majesty King Charles II., dated the 2nd May 1670, the Company was granted the lands and territories as therein described, also the gold and silver to be found or discovered therein, and other rights.

p. 77, ll. 18  
to 45.

The grant is of "the sole Trade and Commerce of all these Seas, Straits, Bays, Rivers, Lakes, Creeks and Sounds . . . that lie within the entrance of . . . Hudson's Straits, together with all the lands and territories upon the Countries, Coasts and Confines of the Seas, Bays, Lakes, Rivers, Creeks and Sounds aforesaid, that are not already actually possessed by or granted to others, "with the Fishing of all Sorts of Fish, Whales, Sturgeons, and all other Royal Fishes . . . together with the Royalty of the Sea . . . and all Mines Royal, as well discovered as not discovered, of Gold, Silver, Gems, and precious Stones, to be found or discovered within the territories, limits and places aforesaid," the said granted land to be thereafter "reckoned and reputed as one of His Majesty's plantations or colonies in America, called Rupert's Land." 10 20

The Company is made "the true and absolute Lords and Proprietors of the same territory, limits and places aforesaid and all other the Premises, saving always the faith, allegiance and sovereign dominion due to " His Majesty, "to have, hold, possess and enjoy the said territory, limits and places and all and singular other the premises hereby granted as aforesaid with their, and every of their rights, members, jurisdictions, prerogatives, royalties and appurtenances whatsoever." 30

p. 78, p. 81,  
l. 33, p. 82,  
p. 83.

In accordance with the statement that Rupert's Land was to be a plantation or colony, the Company was given certain powers of a legislative character, both civil and criminal, and also judicial and executive powers, and even certain limited powers as to military matters, defence and war.

The territory so granted included a very large part of what is now Canada.

p. 85.

4. By the Rupert's Land Act, 1868 (31-32 V., c. 105, Imp.) provision was made for the surrender of the Company's rights under its charter and, upon the acceptance of such surrender and the submission of an address from the Houses of Parliament of Canada, for the inclusion in Canada of "Rupert's Land," defined as including "the whole of the lands and territories held or claimed to be held" by the Company. 40

5. The Company, on the 19th of October, 1869, executed a Deed of Surrender the preamble of which contains, *inter alia*, the following recitals and covenants:—

RECORD.

p. 95, l. 23.

10       “ . . . And whereas Her said Majesty Queen Victoria and the said Governor and Company have agreed to terms and conditions upon which the said Governor and Company shall surrender to Her said Majesty, pursuant to the provisions in that behalf in the ‘Rupert’s Land Act, 1868,’ contained, all the rights of Government and other rights, privileges, liberties, franchises, powers and authorities, and all the lands and territories (except and subject as in the said terms and conditions expressed or mentioned) granted or purported to be granted by the said Letters Patent, and also all similar rights which have been exercised or assumed by the said Governor and Company in any parts of British North America not forming part of Rupert’s Land, or of Canada, or of British Columbia, in order and to the intent that, after such surrender has been effected and accepted under the provisions of the last mentioned Act, the said Rupert’s Land may be admitted into the Union of Dominion of Canada, pursuant to the hereinbefore mentioned Acts or one of them. And whereas the said terms and conditions on which it has been agreed that the said surrender is to be made by the said Governor and Company (who are in the following articles designated as the Company) to Her said Majesty are as follows (that is to say):— . . .”

20       “2. The Company to retain all the posts or stations now actually possessed and occupied by them or their officers or agents whether in Rupert’s Land or any other part of British North America, and may within twelve months after the acceptance of the said surrender select a block of land adjoining each of their posts or stations, within any part of British North America not comprised in Canada and British Columbia in conformity, except as regards the Red River Territory, with a list made out by the Company and communicated to the Canadian Ministers, being the list in the annexed schedule. The actual survey is to be proceeded with, with all convenient speed.” . . .

p. 95, l. 45.

30       “5. The Company may, at any time within fifty years after such acceptance of the said surrender, claim in any township or district within the fertile belt in which land is set out for settlements, grants of land not exceeding one-twentieth part of the land so set out; the blocks so granted to be determined by lot, and the Company to pay a rateable share of the survey expenses, not exceeding 8 cents Canadian an acre. The Company may defer the exercise of their rights of claiming their proportion of each township or district for not more than ten years after it is set out, but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it”. . . .

p. 96, l. 15.

RECORD.

“ And whereas the surrender hereinafter contained is intended to be made in pursuance of the agreement, and upon the terms and conditions hereinbefore stated ; ”

Then the deed provides as follows :—

“ Now know ye, and these presents witness, that, in pursuance of the powers and provisions of the “ Rupert’s Land Act, 1868,” and on the terms and conditions aforesaid, and also on condition of this surrender being accepted pursuant to the provisions of that Act, the said Governor and Company do hereby surrender to the Queen’s Most Gracious Majesty, all the rights of Government, 10  
and other rights, privileges, liberties, franchises, powers and authorities, granted or purported to be granted to the said Governor and Company by the said recited Letters Patent of His Late Majesty King Charles the Second, and also all similar rights which may have been exercised or assumed by the said Governor and Company in any parts of British North America, not forming part of Rupert’s Land or of Canada, or of British Columbia, and all the lands and territories within Rupert’s Land (except and subject as in the said terms and conditions mentioned) granted or purported to be granted to the said Governor and Company by the said Letters Patent.” 20

p. 102. 6. The necessary address having been passed by the Senate and the House of Common of Canada on 31st May, 1869, the Surrender was accepted by Order in Council dated the 23rd of June, 1870, and Rupert’s Land and the Northwestern Territory were thereby united to Canada.

p. 121. 7. No steps appear to have been taken to carry out the terms of the deed of surrender with respect to lands, or to grant any lands to the Company, until after the passage of the first Dominion Lands Act (35 V., c. 23), which was assented to on the 14th of April, 1872. That statute (section 17)  
p. 126, l. 15. recites the conditions in the Deed of Surrender and further recites that—

“ the said Company and the Government of the Dominion have 30  
mutually agreed that, with a view to an equitable distribution throughout the territory described of the said one-twentieth of the lands, certain sections or parts of sections, alike in numbers and position in each township throughout the said territory, shall, as the townships are surveyed, be set apart and designated to meet and cover such one-twentieth.”

The Act accordingly provided for allotting to the Company in satisfaction of its one-twentieth, section 8 and the south half and northwest quarter of section 26 in each township in the fertile belt, except those in each range numbered 5 or any multiple of 5 ; in these townships the whole 40  
of both sections 8 and 26 were so allotted (s. 17). Provision was also made for the special cases of fractional townships and townships broken by lakes (s. 18) and townships held as timber lands (s. 20), and for the substitution of other lands in case the specified sections in any township were found to



have been *bona fide* settled upon (s. 19). As to all land but these, it was provided that notification by the Surveyor General of Canada to the Company of the completion of the survey should operate to give the Company "title in fee simple" to every section 8 and to the whole or part, as the case might be, of every section 26. Patents, however, were to issue to the Company for any additional or substituted lands and lands in fractional townships. RECORD.  
p. 127.

8. The Dominion Lands Act proceeded to deal with other matters not special to the Hudson's Bay Company when dealing with mining lands provided in the first section in the following terms (s. 36);

"No reservation of gold, silver, iron, copper or other mines or minerals shall be inserted in any patent from the Crown granting any portion of the Dominion lands." p. 134.

9. The Act did not provide for the surrender or reconveyance to the Crown of any lands which the Company did not desire to retain, and at the Company's request an Order in Council was approved by the Governor General on the 6th of December, 1872, agreeing that the Company might at any time within twelve months after the title to any lands became vested in it, make a reconveyance without any equivalent. This Order in Council was considered at a meeting of the Company held on January 7th, 1873, and it was resolved that— p. 107.

"The Dominion Lands Act and this Order in Council be taken and substituted for the provisions contained in the deed of surrender of Rupert's Land in all matters relating to the Company's one-twentieth of the lands within the Fertile Belt." p. 108, l. 15.

In 1880 (43 V., c. 26) the above quoted section 36 of the Dominion Lands Act of 1872, which had become section 37 of the Act of 1879 was repealed. pp. 162, 165.

10. In 1883, 46 V., c. 17, section 43 was enacted in the following terms : p. 166.

"It is hereby declared that no grant has operated or will operate as a conveyance of the gold or silver mines therein unless the same are expressly conveyed in such grant."

11. Certain verbal changes were made in the consolidation of 1886 (R.S.C., 1886, c. 54), but in substance the statute remained as before both with regard to the Hudson's Bay lands and mineral lands, and the same provisions were again carried forward into the Revised Statutes of 1906 (c. 55). No changes of substance were made in the later consolidation of the Dominion Lands Act of 1908 (7-8 Ed. VII, c. 20) although there was dropped from it, no doubt as unnecessary, the declaration (verbally different from but substantially equivalent to that introduced in 1883), that no grant from the Crown should be deemed "to have conveyed or to convey the gold and silver mines in the lands described." pp. 167, 8, 9.  
p. 173.  
p. 176.

This completes the review of the material legislation.

RECORD.

12. The Company duly selected blocks of land adjoining each of its posts and stations, as provided in the deed of surrender. Patents for the lands so selected were issued by the Crown in favour of the Company. These Patents also include the lands occupied by the posts and stations and contain no mention of gold or silver mines.

p. 110.

A copy of one of these Patents dated 27th Jan. 1882 is annexed to the document marked "A" as showing the form of all these Patents.

13. The Company from time to time received title by notification of the surveys of townships and confirmation thereof to certain sections and parts of sections within the fertile belt, in accordance with the deed of surrender and subsequent legislation above mentioned. 10

Patents were also issued to the Company by the Crown for other sections or parts of sections in the fertile belt to represent the one-twentieth of each township to which the Company was entitled, in fractional townships and in townships broken by lakes or in lieu of sections or parts of sections allotted to the Company which were already settled upon.

p. 108

p. 112.

p. 114.

One of these notifications dated the 30th June 1881, and a Patent for lands in fractional townships dated the 7th July 1910, and a Patent for land in lieu of lands settled upon, dated the 10th May, 1913, are annexed to the document marked "A," as typical documents of their class. 20

In none of these are gold or silver mines mentioned.

p. 4, par. 9  
& 10.

14. The statement of facts also mentions that both before receiving title to lands to which it was entitled, and after receiving title to lands in the fertile belt, the Company exchanged these for other lands for which patents were issued which do not mention gold or silver.

15. The submission further reads as follows:—

" 11. Therefore it is desired to refer for hearing and consideration to the Supreme Court of Canada certain questions which, for the sake only of convenience and not as intending to waive, release or affect any rights or claims of any party, are confined to lands in the area now included in the Northwest Territories and in the provinces of Alberta, Saskatchewan and Manitoba, the said questions being as follows:— 30

pp. 5 &amp; 6.

1. In whom, after the acceptance of the said surrender and the passing of the said Order in Council of the 23rd day of June, 1870, were vested the precious metals, gold and silver, in, under or upon, the lands in the said area possessed and occupied at the date of the said surrender as posts or stations by the Company, its officers or agents, whether in the Crown represented by the Dominion of Canada, or in the Company? 40

2. In whom were vested the precious metals, gold and silver, in, under or upon the blocks of land adjoining the said posts or stations of the Company and selected by the Company,

whether in the Crown represented by the Dominion of Canada or in the Company :— RECORD.

(a) Upon the selection by the Company of the said blocks of land.

(b) Upon the issue to the Company of the Crown patents for the said blocks of land?"

10 3. In whom were vested the precious metals, gold and silver, in, under or upon, the sections of land or parts thereof in the said fertile belt which were vested in the Company by notification, upon such notification, whether in the Crown represented by the Dominion of Canada, or in the Company?

4. In whom were vested the precious metals, gold and silver, in, under or upon, the land granted to the Company by letters patent from the Crown upon the issue thereof :—

(a) In satisfaction of the Company's one-twentieth of the land in fractional townships, or in townships broken by lakes.

(b) In lieu of lands allotted to the Company but found to be settled upon.

20 5. In whom were vested the precious metals, gold and silver, in, under or upon, the lands granted to the Company by letters patent in lieu of land in which the Company relinquished and surrendered its rights to the Crown upon the issue of such patents?

6. In whom were vested the precious metals, gold and silver, in, under or upon, the land granted to the Company by letters patent in lieu of land conveyed by the Company to the Crown upon the issue of such patents?

30 7. If in any of such cases the precious metals, gold and silver, were vested in the Company, did the repeal of section 37 of The Dominion Lands Act, 1879, Chapter 31 of 42 Victoria, by section 6 of Chapter 26 of 43 Victoria, or the enactment of section 43 of Chapter 17 of 46 Victoria, or of The Dominion Lands Act, Chapter 20 of 7 and 8 Edward VII, or any other enactment affect the ownership of the said precious metals in such case?

40 12. For the purpose of such hearing and consideration, the said Court may in addition to such other facts and matters as the Court may see fit, take into consideration the statements, facts, and documents herein mentioned or set forth, and the statutes of the Parliament of the United Kingdom of Great Britain and Ireland, and of the Parliament of Canada, bearing upon such questions, and the fact that the Company was not requested to consent to and did not consent to the amendment or repeal of any



RECORD.

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2. In whom were vested the precious metals, gold and silver, in, under or upon the blocks of land adjoining the said posts or stations of the Company and selected by the Company,

whether in the Crown represented by the Dominion of Canada or in the Company:—

RECORD.

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40 12. For the purpose of such hearing and consideration, the said Court may in addition to such other facts and matters as the Court may see fit, take into consideration the statements, facts, and documents herein mentioned or set forth, and the statutes of the Parliament of the United Kingdom of Great Britain and Ireland, and of the Parliament of Canada, bearing upon such questions, and the fact that the Company was not requested to consent to and did not consent to the amendment or repeal of any

RECORD.

of the provisions of The Dominions Land Act of 1872, and such other statements, facts and documents, as may be submitted to the Court by order of the Governor in Council.

pp. 55, 56.

16. The answers of the Supreme Court to all questions, except the last, are in the following words: "In the Crown."

17. The answer to the last question is: "The hypothesis of this question does not arise."

18. The reasons of Anglin, C.J., giving the judgment of the Court, may be summed up as follows:—

The purpose and object of the agreement to surrender, which 10 must be considered, was that a company which owned territories having the extent of a vast empire possessing therein the widest powers of government usually belonging to a sovereign state or to a self-governing part of the British Empire to-day and as incidental thereto, the royal prerogative over royal fishing and royal mines was surrendering all its rights and powers to Her Majesty, so that its territory would become part of Canada, transforming itself into an ordinary landowner and private trading company in Canada.

The surrender is in very sweeping terms, but is made "except 20 and subject to certain terms and conditions." In these terms and conditions, posts and stations are retained, the land adjacent thereto is to be selected and in the fertile belt, the company may claim grants.

The word "retain" used in respect of the posts is undoubtedly an exception, but should be taken strongly against the party for whose benefit it is introduced and should be allowed to control the instrument as far as its words extend and no further and the circumstances that the exception applies to a transfer of property to the Crown by no means weakens the case for the application 30 of this rule.

Ownership of precious metals in the lands occupied by the post buildings was not necessary to the enjoyment of these posts for the company's only remaining purpose, namely: trading.

As to the adjacent lands to be selected and the grants to be claimed in the fertile belt, the words in the deed imply that there is a full abandonment to the Crown and there will later be a re-transfer of lands which would not include precious metals by mere implication.

Ordinary grants as to these lands were provided for and were 40 taken and the title defined by section 21 of the Act of 1872 is in fee simple, thus supporting the view that precious metals are not included.

The subsequent conduct of the company in accepting these grants and assenting to this Act of 1872 and to the Order in Council



of the 6th of December of the same year afford a strong indication, to say the least, that the company understood its reservation as not including precious metals.

10 He further holds that there is nothing in the subsequent Canadian legislation particularly in section 36 of the Dominion Lands Act of 1872, which supports the view that precious metals in Dominion lands passed by implication to grantees of such lands from the Crown. The words of this section 36 are not tantamount to an affirmative enactment that the Crown's rights to these shall  
pass by every such grant. The Crown is not mentioned and that is not a necessary implication from the language used.

19. Respondent submits, in addition to those contained in the judgment of Anglin, C.J., the following argument:—

20 As to the lands in the fertile belt for which the company is entitled under the deed of surrender to claim grants, the terms of the agreement, it is suggested, are clear. The surrender first becomes effective; then the company becomes entitled to a grant of land with no reference to precious metals. There must be an interval between the surrender taking effect and the regrant taking place which may be quite long and the lands to be regranted are unascertained and are to be determined by lot.

It cannot be suggested that the right to precious metals was retained or that it was to be regranted.

The position is similar as to the lands adjacent to the posts which the Company is to select. A surrender and a subsequent regrant are contemplated, and till the selection is made, there is uncertainty as to what land will be regranted.

30 As to the posts that are to be retained, it is submitted that an intention to apply different rules in respect of Gold and Silver mines to these is most unlikely.

Posts are retained, that is buildings and incidentally the land on which they rest. The word used is not suggestive of any intent to retain these mines. The purpose also of the exception does not call for retention of these mines.

The Company obviously has the same rights in the posts situated within Rupert's land and in the posts out of Rupert's land, and there is no doubt that outside of Rupert's land, the Company had never been entitled to the precious metals. pp. 101, 102.

40 In fact, the word "retain" as to the latter posts was not a proper one, except as to the buildings. The buildings themselves belonged to the Company; but the soil on which they were built was Crown property.

This shows that the word "retain" was used loosely and with reference much more to the buildings than to the land.

The Company obtained from the Government grants of both the land adjacent to posts which it was entitled to select and of

RECORD.

the land on which the posts were built in the same instrument and without distinction between the two, these grants being in the ordinary form and without mention of precious metals, the Company thereby recognizing that there was no difference between both classes of land, and that its rights were only in fee simple.

It is also suggested that, in view of the terms of the original grant to the Company, which carefully distinguishes between the grant of territory and the grant of franchises, in view of the fact that the rights of the Company under this grant were those of a delegate Government and not of an ordinary grantee as proprietor, the right to precious metals did not become merged with the land by the grant, but remained a distinct franchise, and the franchises having been surrendered without exception, the exception as to the posts cannot include these mines. 10

The acceptance by the Company of the Statute of 1872 which describes its right as a mere right in fee simple and its acceptance of ordinary grants not only for the lands under the posts and the lands adjacent thereto, but also for lands in fractional townships and townships containing lakes, for lands exchanged either because the Company's lands were settled down or for other reasons, show that the Company's view of its contract was that the precious metals were not included in the Company's rights. 20

The Statute of 1872 was clearly not intended to enlarge the rights of the Company.

As to section 36, it is submitted that it cannot be construed as an abandonment in respect of all grants to be made whether to the Company or to others of the prerogative right to precious metals.

The repeal of this section in 1880, even admitting the construction suggested by Appellant to be right, would have, at all events, restored the application of the Common Law rule as to all subsequent grants and the retrospective proviso adopted in 1883 would have restored the Common Law rule in respect of grants made previous to 1880. 30

It is submitted that the pretended acceptance by the Company of the Statute of 1872 does not give its provisions a contractual character nor make it unchangeable by legislation, but at all events it can apply only to the provisions in that Statute specially affecting the Company and does not give such a contractual character in favour of the Company to section 36 which is enacted as part of the general law of the land. 40

Had the Company claimed that either under its surrender agreement or under the Statute of 1872, it was entitled to precious metals, it would have, after the repeal of section 36, in 1880, demanded that they be expressly included in the grants, and this was not done.

The failure to retain, in 1908, the retrospective section enacted in 1883, did not, it is submitted, revive section 36 of the Act of 1872, assuming that section ever had the meaning suggested by Appellant.

RECORD.

20. It is submitted that the Judgment of the Supreme Court should be affirmed for the following among other

### REASONS.

- 10 (1) BECAUSE under the surrender agreement either as to lands in the fertile belt for which the Company was entitled to claim grants or lands adjacent to the posts which the Company was entitled to select, or lands on which the posts were built which the Company was entitled to retain, the Company was not entitled to the precious metals in such lands;
- (2) BECAUSE the subsequent legislation does not give the Company such right;
- (3) BECAUSE the Company has been offered and has accepted and holds only title in fee simple to these lands, without any right to precious metals;
- 20 (4) FOR THE REASONS given in the Judgment of the Supreme Court.

AIMÉ GEOFFRION.



In the Privy Council.

No. 85 of 1927.

ON APPEAL  
FROM THE SUPREME COURT OF CANADA.

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BETWEEN

THE GOVERNOR AND COMPANY OF  
ADVENTURERS OF ENGLAND TRADING  
INTO HUDSON'S BAY - - *Appellant*

AND

THE ATTORNEYS-GENERAL FOR THE  
DOMINION OF CANADA AND THE  
PROVINCES OF MANITOBA, SASKATCHE  
WAN AND ALBERTA - - *Respondent*

---

CASE OF RESPONDENT THE  
ATTORNEY-GENERAL FOR  
THE DOMINION OF CANADA.

---

CHARLES RUSSELL & CO.,

37, Norfolk Street, Strand, W.C.2,

*Solicitors for Respondent*

*the Attorney-General for Dominion of Canada*

# In the Privy Council.

No. 85 of 1927.

## ON APPEAL FROM THE SUPREME COURT OF CANADA.

IN THE MATTER of a Reference as to the power of the Parliament of Canada and of the Government of Canada with respect to precious metals in, under or upon certain lands of the Hudson's Bay Company, and as to the ownership of such precious metals.

BETWEEN

THE GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND TRADING INTO HUDSON'S BAY .. .. .

*Appellants,*

AND

THE ATTORNEYS-GENERAL FOR THE DOMINION OF CANADA AND THE PROVINCES OF MANITOBA, SASKATCHEWAN AND ALBERTA ..

*Respondents.*

## CASE OF THE RESPONDENT

THE ATTORNEY-GENERAL OF THE PROVINCE OF MANITOBA.

1. This is an appeal by special leave from a judgment of the Supreme Court of Canada dated the 20th day of April 1927 answering certain questions referred to the Court by the Governor-General in Council under the provisions of Section 60 of the Supreme Court Act.

Record.  
p. 54.  
p. 5, l. 7 et seq.  
p. 1.

2. The chief question raised by the appeal is whether the ownership of the precious metals in under or upon land in the North West Territories and in the Provinces of Manitoba, Saskatchewan and Alberta possessed and occupied by the Appellants is vested in the Appellants or in the Crown. The reference, however, does not raise the question whether the said ownership, if vested in the Crown, is vested in the Crown in right of the Dominion or in right of the Province in which the land is situate.

Record.  
pp. 72-83.

3. By Royal Charter, contained in Letters Patent dated the 2nd day of May 1670, His Majesty King Charles II incorporated the Appellants and granted to the Appellants amongst other rights and privileges :—

p. 77, l. 20.

(A) “the sole trade and commerce of all these seas, streights, “bays, rivers, lakes, creeks and sounds, in whatsoever latitude they “shall be, that lie within the entrance of the streights commonly “called Hudson’s Streights, together with all the lands and territories “upon the countries, coasts and confines of the seas, bays, lakes, “rivers, creeks and sounds aforesaid . . . together with the “royalty of the sea upon the coasts within the limits aforesaid, and 10 “all mines royal, as well discovered as not discovered of gold, silver, “gems and precious stones, to be found or discovered within the “territories, limits and places aforesaid,” the land to be called Rupert’s Land and to be held as of the Royal Manor of East Greenwich in the County of Kent in free and common socage.

p. 78, l. 13  
et seq.

(B) power to make laws, with penalties and punishments, for the good government of the Appellants, their Governors, officers, servants or agents and for the better advancement and continuance of the Appellants’ trade and plantations.

p. 79, l. 1.

(C) of the King’s “ample and abundant Grace, certain knowledge 20 “and mere motion . . . not only the whole, entire, and only “trade and traffick, and the whole, entire and only liberty, use and “privilege of trading and trafficking to and from the territories, limits “and places aforesaid ; but also the whole and entire trade and traffick “to and from all havens, bays, creeks, rivers, lakes, and seas, into “which they shall find entrance or passage by water or land out of “the territories, limits or places aforesaid ; and to and with all the “natives and people, inhabiting or which shall inhabit within the “territories limits and places aforesaid ; and to and with all other “nations inhabiting any of the coast adjacent to the said territories, 30 “limits and places . . .”

p. 81, l. 32  
et seq.

(D) power to appoint governors and other officers, and to administer justice, civil or criminal.

p. 82, l. 10.

(E) power to make war or peace with any prince or people that are not Christians in any places where the Appellants shall have plantations, forts or factories, or adjacent thereunto.

p. 82, l. 19.

(F) power to build and maintain fortifications, garrisons, colonies or plantations, towns or villages, in any parts or places within the limits and bounds before in the said charter granted unto the Appellants.

p. 117, l. 31.

4. By Section 146 of the British North America Act, 1867, the Queen 40 was authorised, on address from the Houses of Parliament of Canada, on such terms and conditions as the address might express and as the Queen might approve, to admit Rupert’s Land and the North-Western Territory or either of them into the Dominion of Canada by Order in Council which should have effect as if enacted by the Parliament of the United Kingdom.

p. 85.

5. Rupert’s Land Act, 1868, authorised Her Majesty to accept a surrender of all or any of the lands, territories, rights, privileges, liberties,



franchises, powers and authorities whatsoever granted or purported to be granted by the Letters Patent dated the 2nd day of May 1670, upon such terms and conditions as should be agreed between Her Majesty and the Appellants, and enacted that upon such surrender all rights of government and proprietary rights and all privileges, liberties, franchises, powers and authorities whatsoever, granted or purported to be granted by the said Letters Patent to the Appellants which should have been surrendered should be absolutely extinguished; provided that nothing in the said Act should prevent the Appellants from carrying on in Rupert's Land or elsewhere  
10 trade and commerce.

Record.

6. By Section 2 of the said Act, the term "Rupert's Land," for the purposes of the said Act, included the whole of the lands and territories held or claimed to be held by the Appellants. p. 86, l. 12.

7. By a deed of surrender dated the 19th day of November 1869 the Appellants, after reciting that they had exercised the rights granted by their charter and might have exercised and assumed rights of government in parts of British North America not forming part of Rupert's Land, Canada, or British Columbia, and that terms and conditions therein set out had been agreed between Her Majesty and the Appellants, surrendered  
20 on the said terms and conditions all the rights of government and other rights, privileges, liberties, franchises, powers and authorities granted or purported to be granted by the said Letters Patent and also all similar rights which the Appellants might have exercised or assumed in any parts of British North America not forming part of Rupert's Land, Canada, or British Columbia, and all the lands and territories within Rupert's Land (except as in the said terms and conditions mentioned) granted or purported to be granted by the said Letters Patent. p. 94.  
p. 93, l. 33.  
p. 95, l. 42  
et seq.  
p. 97, l. 24.  
p. 97, l. 32.

8. The said terms and conditions included the following:—

30 (2) the Appellants to retain all the posts or stations then possessed or occupied by them in Rupert's Land or any other part of British North America, and might within twelve months of the 22nd day of June, 1870 (being the day on which Her Majesty by an instrument under Her Sign Manual accepted the said surrender) select a block of land adjoining each of their posts or stations in conformity, except as regards the Red River Territory, with a list of 45,160 acres in all in an annexed schedule. p. 95, l. 45.  
p. 105, l. 1.  
p. 96, l. 1.

40 (5) the Appellants might at any time before the 22nd day of June, 1920 claim in any township or district within the fertile belt (defined in Condition 6) grants of blocks of land, determined by lot, not exceeding one-twentieth part of the land set out for settlement, with power to defer the claiming of their proportion of each township or district for not more than ten years after it is set out. p. 96, l. 15.

(10) all titles to land granted by the Appellants up to the 8th day of March, 1869, were to be confirmed. p. 97, l. 4.

9. By an Order in Council dated the 23rd day of June, 1870 Her Majesty admitted Rupert's Land and the North-Western Territory into p. 102.

Record.

pp. 120, l. 26;  
173, l. 22;  
171, l. 9.

pp. 118-120,  
171-173, 169-  
171.

the Dominion of Canada, and the Parliament of Canada in Acts, which provide that nothing therein contained should in any way prejudice or affect the Appellants' rights or properties as contained in the conditions of surrender has established parts of the said land and territory as the Provinces of Manitoba, Saskatchewan and Alberta.

pp. 118-120,  
p. 119, l. 37.

10. By the Manitoba Act, 1870, the Parliament of Canada for the quieting of titles provided for the confirmation, by grant from the Crown, of freehold grants by the Appellants, for conveying freehold estates to other grantees from the Appellants and for protecting the peaceable possession of other settlers within the Province of Manitoba.

10

pp. 110-111.  
p. 110, l. 32.

11. From time to time as land selected by the Appellants in accordance with the said conditions was surveyed, the land so selected and surveyed was transferred to the Appellants by Letters Patent under the Great Seal of Canada to have and to hold unto the Appellants their successors and assigns for ever, subject to rights of free passage and enjoyment of navigable waters and the right of Canada to retake land required for public works. The land transferred by such Letters Patent included in each case the land on which the Appellant's posts or stations were established as well as selected adjoining land.

pp. 121-157.  
p. 122, l. 19.

12. By the Dominion Lands Act, 1872, provision was made for laying out the public lands of the Dominion in Manitoba and the North-West Territories in townships of six miles square divided into sections of one mile square and for giving effect to the Appellant's rights as follows:—

p. 126, l. 6.

(A) By Section 17 of the Act in every fifth township Sections 8 and 26 and in every other township Section 8 and the south half and north-west quarter of Section 26 should be known and designated as the Appellants' land, or in the case of fractional townships (by Section 18 as amended by Section 3 of the Dominion Lands Act, 1874) or townships broken by lakes such parts of Sections 8 and 26 as the Minister of the Interior and the Appellants or some person duly authorised by them respectively should allot.

p. 126, l. 36.  
p. 158, l. 5.

p. 126, l. 42.

(B) By Section 19 if land so allotted to the Appellants was in the possession of an authorised *bona fide* settler the Appellants foregoing their rights to such land should have the right in lieu thereof to select an equal quantity of any land then unoccupied.

p. 127, l. 14.  
p. 108, l. 23.

(c) By Section 21 on notification, to be duly given to the Appellants by the Surveyor-General, title in fee simple in the lands to which the Appellants should become entitled under Section 17 was to vest in the Appellants without issue of a patent, and for the lands to which the Appellants should become entitled under Sections 18 and 19 patents were to issue.

p. 134, l. 9.

13. By Section 36 of the Act no reservation of gold, silver, iron, copper, or other mines or minerals was to be inserted in any patent from the Crown granting any Dominion lands.

14. By an agreement between the Crown and the Appellants evidenced by an Order in Council of the 6th day of December, 1872, and a resolution of the Appellants dated the 7th day of January, 1873, the Appellants in lieu of their rights to lands in the fertile belt under the terms and conditions of the said deed of surrender accepted the provisions of the Dominion Lands Act, 1872, with the right voluntarily to reconvey any lands vested in the Appellants under the said Act to the Crown within twelve months of such lands so vesting. Record.  
p. 107.  
p. 108.
15. From time to time land in fractional townships allotted to the Appellants in accordance with the said Act was conveyed to the Appellants by Letters Patent under the Great Seal of Canada to have and to hold unto the Appellants their successors and assigns forever subject to rights of free passage and enjoyment of navigable waters, rights of fishery and of occupation connected therewith, and the right of Canada to retake lands required for public works. Similar grants were made to the Appellants of land in the fertile belt in lieu of land reconveyed by the Appellants to the Crown. pp. 112-113.  
pp. 114-116.
16. Section 36 of the Act was re-enacted in a consolidating statute in 1879 as Section 37 which was repealed by Section 6 of the Dominion Lands Act, 1880, but the other material provisions of the 1872 Act were in substance repeated in consolidating Acts in 1886, 1906 and 1908. p. 162, l. 36.  
p. 165, l. 32.  
pp. 167, 173,  
176.
17. Section 43 of the Dominion Lands Act, 1883 (in substance re-enacted in each later consolidating Act except that of 1908) declared that no grant from the Crown of lands in freehold or for any less estate has operated or will operate as a conveyance of the gold or silver mines therein, unless the same are expressly conveyed in such grant. p. 166, l. 35.  
p. 169, l. 1;  
p. 175, l. 25;  
p. 176.
18. In the circumstances above set out disputes arose between the Crown and the Appellants concerning the ownership of the precious metals gold and silver in under or upon the Appellants' lands.
19. Under the authority of Section 60 of the Supreme Court Act the Governor-General by Order in Council made the 26th day of January, 1926, referred to the Supreme Court of Canada questions, amended by an Order in Council made the 12th day of October, 1926, which asked among other things, whether the said ownership was in the Crown represented by the Dominion of Canada or in the Appellants. By the said Order in Council made the 12th day of October, 1926, it was declared, however, not to be the intention to raise any issues as between the Dominion and any Province, and that so far as any lands in the Province of Manitoba are concerned the questions might be answered as if the words "represented by the Dominion of Canada" where they occur after the word "Crown" were struck out. p. 2, l. 14  
et seq.  
pp. 9-10.  
p. 10, l. 22.
20. The questions, as amended, with the answers made by the Court are as follows :— p. 5, l. 7  
et seq.  
p. 55, l. 9  
et seq.  
p. 67, l. 32  
et seq.
- (1) In whom after the acceptance of the said surrender and the passing of the said Order in Council of the 23rd day of June, 1870, were vested the precious metals, gold and silver, in, under or upon, the lands



in the said area (that is, the area now included in the North-West Territories and in the Provinces of Alberta, Saskatchewan and Manitoba) possessed and occupied at the date of the said surrender as posts or stations by the Company (as the Appellants are styled in each of the said questions), its officers or agents, whether in the Crown represented by the Dominion of Canada, or in the Company ?

*Answer :—*In the Crown.

(2) In whom were vested the precious metals, gold and silver, in, under or upon the blocks of land adjoining the said posts or stations of the Company and selected by the Company, whether in the Crown 10 represented by the Dominion of Canada or in the Company :—

(A) Upon the selection by the Company of the said blocks of land ?

*Answer :—*In the Crown.

(B) Upon the issue to the Company of the Crown patents for the said blocks of land ?

*Answer :—*In the Crown.

(3) In whom were vested the precious metals, gold and silver, in, under or upon the sections of land or parts thereof in the said fertile belt which were vested in the Company by notification, upon such 20 notification, whether in the Crown represented by the Dominion of Canada, or in the Company ?

*Answer :—*In the Crown.

(4) In whom were vested the precious metals, gold and silver, in, under or upon the land granted to the Company by Letters Patent from the Crown upon the issue thereof :—

(A) In satisfaction of the Company's one-twentieth of the land in the fractional townships, or in the townships broken by lakes ?

*Answer :—*In the Crown.

(B) In lieu of lands allotted to the Company found to be 30 settled upon ?

*Answer :—*In the Crown.

(5) In whom were vested the precious metals, gold and silver, in, under or upon the lands granted to the Company by Letters Patent in lieu of land in which the Company relinquished and surrendered its rights to the Crown upon the issue of such patents ?

*Answer :—*In the Crown.

(6) In whom were vested the precious metals, gold and silver, in, under or upon the land granted to the Company by Letters Patent in lieu of the land conveyed by the Company to the Crown upon the issue 40 of such patents ?

*Answer :—*In the Crown.

(7) If in any of such cases the precious metals, gold and silver, were vested in the Company, did the repeal of Section 37 of the Dominion

Lands Act, 1879, Chapter 31 of 42 Victoria, by Section 6 of Chapter 26 of 43 Victoria, or the enactment of Section 43 of Chapter 17 of 46 Victoria, or of the Dominion Lands Act, Chapter 20 of 7 and 8 Edward VII, or any other enactment affect the ownership of the said precious metals in such case?

Record.

*Answer* :—The hypothesis of this question does not arise.

21. In pursuance of Orders of the Supreme Court of Canada notices of the hearing of the said reference were sent to the Appellants' solicitors and to the Attorneys-General of Ontario, Quebec, Alberta, Saskatchewan, British Columbia and Manitoba, and the Attorneys-General of Canada, Manitoba and Saskatchewan and the Appellants filed factums and were heard by Counsel at the hearing of the said reference. p. 12.

22. The judgment of the Supreme Court (Anglin C.J.C. and Duff, Mignault, Rinfret and Maclean, *ad hoc*, JJ.) was delivered on the 20th April, 1927, by Anglin, C.J.C. p. 56, l. 32 et seq.

23. The reasons for the judgment may be summarised as follows :—

(A) Prior to the 23rd June, 1870, the Appellants owned the precious metals in the territories granted to them in 1670 as part of the Appellants' estate in the land. p. 56, l. 43.

20 (B) Subject to the possible effect of subsequent legislation the solution of the questions depends on the deed of surrender which is to be construed, consistently with its terms, so as best to carry into effect the agreement between the Crown and the Appellants. p. 60, l. 34. p. 60, l. 43 et seq.

(C) The intention was that the Appellants should surrender all rights, governmental and proprietary, in order to pave the way for the transfer by Her Majesty of the fullest rights of government and administration over, and ownership of the territory in question to the new Dominion of Canada. p. 61, l. 11 et seq.

30 (D) The Appellants, holding their trading posts and stations with immediately adjacent parcels of land needed for their proper conduct, and receiving parcels of land in the fertile belt, were to exercise and possess for the future no rights other than those of a private trading corporation owning property in Canada. p. 61, ll. 18-26.

(E) So complete was the contemplated surrender that it was deemed prudent expressly to preserve the Appellants' right to carry on trade and commerce. p. 61, ll. 26-32.

40 (F) Whatever reasons there may have been for the original grant of prerogative rights cease to exist on acceptance of the surrender, and all government control over and beneficial interest in the territories surrendered were thereafter to be vested in the Dominion of Canada. p. 61, ll. 33-37.

(G) By the operative part of the deed of surrender, subject to an exception to be considered later, the Appellants surrendered to the Crown "all the lands or territories within Rupert's land . . . . "granted or purported to be granted" to the Appellants, words apt, sufficient and meant to carry as *partes soli* the precious metals in the land surrendered. p. 62, ll. 22-27.

(H) The phrase in the operative clause “(except and subject as “in the said terms and conditions mentioned)” refers to conditions 2 and 5 by which the Appellants were to have the right “to retain” their posts and stations, “to select” adjacent land and “to claim” grants of land in the fertile belt, a careful distinction being made and an attempt to apply terms apt to express the legal process to which land of each type was designed to be subjected.

(I) The word “retain” signifies that the property to which it refers did not form part of the property surrendered, and to such property the word “except” finds appropriate application. But an exception should be taken most strongly against the party for whose benefit it is introduced. Since the purpose of the exception is fully met if its operation be restricted to the buildings used as posts and stations and to such fee simple in the lands as the subject ordinarily holds, the precious metals in the lands retained were not excepted but passed under the general terms of the surrender to the Crown.

(J) Lands to be “selected” or “claimed” were to pass to the Crown under the surrender, to be regranted or retransferred when selected or claimed. On surrender the precious metals belonged to the Crown by prerogative right, and upon regrants or retransfers, however effected, would not pass unless specifically mentioned and covered by apt and precise words.

(K) If the Appellants’ right to the precious metals in question subsisted as a franchise the surrender of all franchises is complete and without exception or qualification.

(L) The provision of Section 36 of the Dominion Lands Act, 1872, that no reservation of gold, silver, iron, copper or other mines or minerals should be inserted in any patent granting Dominion lands is not tantamount to an affirmative enactment that the Crown’s right to gold and silver should pass by every such grant. In the absence of explicit terms or necessary implication the prerogative right of the Crown is not affected. When the possibility of such an implication being asserted was brought to the notice of the Parliament of Canada it passed legislation declaratory of its contrary intent (Section 43 of the Act of 1883).

24. This Respondent humbly submits that the judgment under appeal is right and ought to be affirmed for the following among other

## REASONS.

1. Because no right to the precious metals vested in the Appellants otherwise than by virtue of the Royal Charter of 1670.
2. Because the rights to precious metals conferred by the Royal Charter were a franchise unconditionally surrendered to the Crown by the deed of the 19th November, 1869.



3. Because by the deed of the 19th November, 1869, the Appellants surrendered all their rights, proprietary or otherwise (except the right of non-exclusive trade and their posts and stations) and thereafter held all their land only under grants (statutory or by Letters Patent) in fee simple which did not vest in the Appellants the precious metals.
- 10 4. Because the statutory rights accepted by the Appellants in 1873 in lieu of their previous rights were subject to the power of the Parliament of Canada to alter such rights by legislation including retrospective legislation; and any rights to precious metals vested in the Appellants by grant were taken away by Section 43 of the Dominion Lands Act, 1883.
- 20 5. Because the Royal Charter purported to grant precious metals only in a small part of the lands over which rights were granted to the Appellants, namely, only in the lands within Hudson's Straights actually discovered and occupied by the King's subjects before the 2nd May 1670.
6. For the reasons stated in the opinion of the Supreme Court of Canada.

R. W. CRAIG.

JOHN ALLEN.

FRANK GAHAN.

# In the Privy Council.

No. 85 of 1927.

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*On Appeal from the Supreme Court of Canada*

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IN THE MATTER of a Reference as to the power of Parliament of Canada and of the Government of Canada with respect to precious metals in, under or upon the lands of the Hudson's Bay Company, and as to the ownership of such precious metals

BETWEEN

THE GOVERNOR AND COMPANY OF  
ADVENTURERS OF ENGLAND  
TRADING INTO HUDSON'S BAY - *Appellant*

AND

THE ATTORNEYS-GENERAL FOR  
THE DOMINION OF CANADA  
AND THE PROVINCES OF  
MANITOBA, SASKATCHEWAN  
AND ALBERTA - - - - *Respondents*

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CASE OF THE RESPONDENTS

THE ATTORNEY-GENERAL OF THE  
PROVINCE OF MANITOBA.

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BLAKE & REDDEN,  
17, Victoria Street,

ON APPEAL FROM THE SUPREME COURT OF  
CANADA.

BETWEEN

THE GOVERNOR AND COMPANY OF ADVENTURERS  
OF ENGLAND TRADING INTO HUDSON'S BAY - *Appellants*

AND

THE ATTORNEYS-GENERAL FOR THE DOMINION  
OF CANADA AND THE PROVINCES OF MANITOBA  
SASKATCHEWAN AND ALBERTA - - - *Respondents.*

RECORD OF PROCEEDINGS

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ON APPEAL FROM THE SUPREME COURT OF  
CANADA.

---

BETWEEN

THE GOVERNOR AND COMPANY OF ADVENTURERS  
OF ENGLAND TRADING INTO HUDSON'S BAY - *Appellants*

AND

THE ATTORNEYS-GENERAL FOR THE DOMINION  
OF CANADA AND THE PROVINCES OF MANITOBA  
SASKATCHEWAN AND ALBERTA - - - *Respondents.*

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RECORD OF PROCEEDINGS.

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No. 1.

Order of Reference by the Governor General in Council.

P.C. 108.

*In the  
Supreme  
Court of  
Canada.*

*Certified to be a true copy of a Minute of a Meeting of the Committee of the  
Privy Council, approved by His Excellency the Governor General on  
the 26th January, 1926.*

No. 1.  
Order of  
Reference  
by the  
Governor  
General in  
Council,  
26th Janu-  
ary 1926.

The Committee of the Privy Council have had before them a Report, dated 20th January, 1926, from the Minister of Justice, submitting that questions have arisen between the Governor and Company of Adventurers  
10 of England trading into Hudson's Bay, and the Government of Canada, as to the power of the Parliament and Government of Canada over the precious metals, gold and silver, in, under or upon lands of the said Company, and as to the ownership of the said precious metals;

That as the result of negotiations which have taken place between the Government and the Company it has been agreed that it is advisable to refer the said questions to the Supreme Court of Canada in the form and

*In the  
Supreme  
Court of  
Canada.*

No. 1.  
Order of  
Reference  
by the  
Governor  
General in  
Council,  
26th Janu-  
ary 1926—  
*continued.*  
\* See Docu-  
ment No. 2,  
below.

manner set out in the attached document marked "A,"\* which contains a statement of the facts of the case and of the questions to be submitted as agreed upon between the parties.

The Minister, therefore, recommends that the questions set out in the said attached document marked "A"\* be referred to the Supreme Court of Canada for hearing and consideration under the authority of the Supreme Court Act.

The Committee concur in the foregoing recommendation and submit the same for approval.

E. J. LEMAIRE,

10

*Clerk of the Privy Council.*

The Honourable  
The Minister of Justice.

## No. 2.

No. 2.  
Statement  
of Facts of  
the Case  
and Ques-  
tions sub-  
mitted for  
decision, as  
agreed upon.

### Statement of Facts of the Case and Questions Submitted for Decision, as agreed upon.

*(Document marked "A" attached to No. 1.)*

IN THE MATTER of a reference by His Excellency, The Governor-in-Council, to The Supreme Court of Canada under and pursuant to The Supreme Court Act, of certain questions for hearing and consideration as to the power of the Parliament of Canada and of the Government of Canada over the precious metals, gold and silver, in, under and upon, certain lands of The Governor and Company of Adventurers of England trading into Hudson's Bay, commonly called the Hudson's Bay Company, and as to the ownership of the said precious metals. 20

WHEREAS questions have arisen as to the power of the Parliament of Canada and of the Government of Canada over the precious metals, gold and silver, in, under or upon lands of The Governor and Company of Adventurers of England trading into Hudson's Bay, hereinafter called the Company, and as to the ownership of the said precious metals:

AND WHEREAS it is deemed advisable to refer the said questions to The Supreme Court of Canada for hearing and consideration: 30

AND WHEREAS the opinion of the said Supreme Court is desired upon the following case:—

1. By letters patent granted by His late Majesty, King Charles the Second, bearing date the 2nd day of May, 1670, the Company was granted the lands and territories as therein described, also the gold and silver to be found or discovered therein and other rights, etc., the whole as more fully described in said letters patent, a true copy whereof is annexed hereto as

\* Record,  
p. 72.

\*Schedule "A."

2. By Deed of Surrender bearing date the 19th day of November, 1869, the Company did surrender to Her late Majesty on the terms and conditions of the said Surrender, and on condition of the said Surrender being accepted pursuant to the provisions of The Rupert's Land Act, 1868, all the rights of government and other rights, privileges, liberties, franchises, powers and authorities granted or purported to be granted to the Company by the said letters patent, and also all the lands and territories within Rupert's Land (except and subject as in the said terms and conditions mentioned) granted or purported to be granted to the Company by the said letters  
10 patent.

3. The said surrender was duly accepted, and by Order of Her late Majesty in Council, bearing date the 23rd day of June, 1870, Rupert's Land and the Northwest Territories were admitted into the Dominion of Canada. \*Schedule "B" hereto contains a true copy of the said The Rupert's Land Act, 1868, Order in Council and Surrender.

4. The Company, pursuant to the said Deed of Surrender and Order in Council, retained all the posts or stations actually possessed and occupied by it or its officers or agents at the time of the said Surrender and after the acceptance of said Surrender, duly selected blocks of lands adjoining each  
20 of its posts or stations within any part of British North America, not comprised in Canada and British Columbia.

5. Since the said Surrender was so made and accepted, the Crown, represented by the Dominion of Canada, has issued patents of the lands so selected adjoining each of its said posts or stations and the said patents also included the land actually possessed and occupied by the Company as posts or stations at the time of the said Surrender. †Schedule "C" hereto is a true copy of one of said patents bearing date the 27th of January, 1882, and the other patents were issued in the same form.

6. One of the terms and conditions of the said Surrender was that  
30 the Company might at anytime within fifty years after the acceptance of the said Surrender claim in any township or district within the fertile belt as therein described in which land is set out for settlement grants of land not exceeding one-twentieth part of the land so set out, the same to be determined by lot.

7. The Dominion Lands Act, Chapter 23 of the Statutes of Canada, 1872, contains provisions relating to lands to which the Company became entitled under such conditions in the said Surrender. An Order in Council was passed by the Dominion Government on the 6th of December, 1872, a true copy of which is annexed hereto as ‡Schedule "D," and the  
40 Company on the 7th of January, 1873, adopted the Resolution a copy of which is annexed hereto as §Schedule "E."

8. The Company has from time to time received title by notification of the surveys of townships and confirmation thereof to certain sections and parts of sections within the territory described as the fertile belt, and has also from time to time received title by patent from the Crown, represented

*In the  
Supreme  
Court of  
Canada.*

No. 2.

Statement  
of Facts of  
the Case  
and Ques-  
tions sub-  
mitted for  
decision, as  
agreed upon  
—continued.

\* Record,  
p. 85.  
p. 102.  
p. 94.

† Record,  
p. 110.

‡ Record,  
p. 107.

§ Record,  
p. 108.



*In the  
Supreme  
Court of  
Canada.*

No. 2.  
Statement  
of Facts of  
the Case  
and Ques-  
tions sub-  
mitted for  
decision, as  
agreed upon  
—continued.

\* Record,  
p. 108.

† Record,  
p. 112.

‡ Record,  
p. 114.

by the Dominion of Canada, to other sections and parts of sections of land within the fertile belt, for the Company's one-twentieth of the lands in fractional townships and in townships broken by lakes and in lieu of the sections or parts of sections allotted to the Company found to be settled upon. None of the said patents so issued expressly refer to the precious metals or to any minerals. \*Schedule "F" hereto contains a copy of one of such notifications, bearing date the 30th of June, 1881, and †Schedule "G" hereto contains a copy of one of said patents issued to the Company for such lands in fractional townships, bearing date the 7th of July 1910. ‡Schedule "H" hereto contains a copy of one of said patents issued to the Company for land in lieu of land so settled upon, bearing date the 10th of May, 1913. These may be regarded as typical of such documents. 10

9. At the request of the Crown, the Company from time to time, before receiving title to sections or parts of sections of land to which it was entitled, relinquished and surrendered its rights thereto, and obtained patents for other lands in lieu thereof from the Crown. Neither the said surrenders nor the said patents contain any express mention of minerals.

10. The Company, after having received title to sections and parts of sections of land within the said fertile belt, has from time to time, at the request of the Crown, conveyed to the Crown the said lands, and obtained patents from the Crown for other lands in lieu thereof. Neither the said conveyances from the Company nor the said patents contain any express mention of minerals, and the lands so patented to the Company comprise lands both within and without the said fertile belt. 20

11. Therefore it is desired that the following questions be referred to The Supreme Court of Canada for hearing and consideration under the authority of The Supreme Court Act, namely:—

1. In whom, after the acceptance of the said surrender and the passing of the said Order in Council of the 23rd day of June, 1870, were vested the precious metals, gold and silver, in, under or upon, the lands possessed and occupied at the date of the said surrender as posts or stations, whether in Rupert's Land or any other part of British North America, by the Company, its officers or agents, whether in the Crown, represented by the Dominion of Canada, or in the Company? 30

2. In whom were vested the precious metals, gold and silver, in, under or upon, the blocks of land adjoining the posts or stations of the Company in any part of British North America, not comprised in Canada and British Columbia, selected by the Company, whether in the Crown, represented by the Dominion of Canada or in the Company:— 40

(a) Upon the selection by the Company of the said blocks of land.

(b) Upon the issue to the Company of the Crown patents for the said blocks of land.

" 11. Therefore it is desired to refer for hearing and consideration to the Supreme Court of Canada certain questions which, for the sake only of convenience and not as intending to waive, release or affect any rights or claims of any party, are confined to lands in the area now included in the Northwest Territories and in the provinces of Alberta, Saskatchewan and Manitoba, the said questions being as follows :—

*In the  
Supreme  
Court of  
Canada.*

No. 2.  
Statement  
of Facts of  
the Case  
and Ques-  
tions sub-  
mitted for  
decision, as  
agreed upon  
—continued.

10 1. In whom, after the acceptance of the said surrender and the passing of the said order in Council of the 23rd day of June, 1870, were vested the precious metals, gold and silver, in, under or upon, the lands in the said area possessed and occupied at the date of the said surrender as posts or stations by the Company, its officers or agents, whether in the Crown represented by the Dominion of Canada, or in the Company ?

2. In whom were vested the precious metals, gold and silver, in, under or upon the blocks of land adjoining the said posts or stations of the Company and selected by the Company, whether in the Crown represented by the Dominion of Canada or in the Company :—

(a) Upon the selection by the Company of the said blocks of land.

20 (b) Upon the issue to the Company of the Crown patents for the said blocks of land ? "

NOTE :—The Order-in-Council authorizing the above amendments will be found at p. 107.\*

\* Record,  
p. 9.

3. In whom were vested the precious metals, gold and silver, in, under or upon, the sections of land or parts thereof in the said fertile belt which were vested in the Company by notification, upon such notification, whether in the Crown represented by the Dominion of Canada, or in the Company ?

30 4. In whom were vested the precious metals, gold and silver, in, under or upon, the land granted to the Company by letters patent from the Crown upon the issue thereof :—

(a) In satisfaction of the Company's one-twentieth of the land in fractional townships, or in townships broken by lakes.

(b) In lieu of lands allotted to the Company but found to be settled upon.

5. In whom were vested the precious metals, gold and silver, in, under or upon, the lands granted to the Company by letters patent in lieu of land in which the Company relinquished and surrendered its rights to the Crown upon the issue of such patents.

40 6. In whom were vested the precious metals, gold and silver, in, under or upon, the land granted to the Company by letters patent in lieu of land conveyed by the Company to the Crown upon the issue of such patents ?

7. If in any of such cases the precious metals, gold and silver, were vested in the Company, did the repeal of section 37 of The

*In the  
Supreme  
Court of  
Canada.*

No. 2.

Statement  
of Facts of  
the Case  
and Ques-  
tions sub-  
mitted for  
decision, as  
agreed upon  
—continued.

Dominion Lands Act, 1879, Chapter 31 of 42 Victoria, by section 6 of Chapter 26 of 43 Victoria, or the enactment of section 43 of Chapter 17 of 46 Victoria, or of The Dominion Lands Act, Chapter 20 of 7 and 8 Edward VII, or any other enactment affect the ownership of the said precious metals in such case?

12. For the purpose of such hearing and consideration, the said Court may in addition to such other facts and matters as the Court may see fit, take into consideration the statements, facts and documents herein mentioned or set forth, and the statutes of the Parliament of the United Kingdom of Great Britain and Ireland, and of the Parliament of Canada, bearing upon such questions, and the fact that the Company was not requested to consent to and did not consent to the amendment or repeal of any of the provisions of The Dominion Lands Act of 1872, and such other statements, facts and documents, as may be submitted to the Court by order of the Governor in Council. 10

Approved.

W. STUART EDWARDS,  
*Counsel for the Dominion Government.*

DAN H. LAIRD,  
*Counsel for the Hudson's Bay Company.* 20

No. 3.

Order for  
inscription  
of Reference  
and Direc-  
tions,  
20th Febru-  
ary 1926.

No. 3.

**Order for inscription of Reference and Directions.**

**IN THE SUPREME COURT OF CANADA.**

Before the Honourable Mr. Justice Mignault, Saturday the 20th day of February, A.D., 1926.

IN THE MATTER OF A REFERENCE AS TO THE POWER OF THE PARLIAMENT OF CANADA AND OF THE GOVERNMENT OF CANADA WITH RESPECT TO PRECIOUS METALS IN, UNDER OR UPON CERTAIN LANDS OF THE HUDSON'S BAY COMPANY, AND AS TO THE OWNERSHIP OF SUCH PRECIOUS METALS. 30

Upon the application of the Attorney General of Canada for directions as to the inscription for hearing of the case relating to the above questions referred by His Excellency the Governor General, for hearing and consideration by the Supreme Court of Canada under the provisions of section 60 of the Supreme Court Act, upon hearing read the Order in Council dated the 26th day of January, 1926 (P.C. 108), and the document "A" referred to therein, setting forth the said questions, upon reading the affidavit of W. Stuart Edwards filed herein, and upon hearing what was alleged by counsel for the applicant :



IT IS ORDERED that the said case be inscribed for hearing Monday the 26th day of April, A.D., 1926.

AND IT IS FURTHER ORDERED that Messrs. Munson, Allan, Laird, Davis, Haffner & Hobkirk, solicitors for the Hudson's Bay Company (having their offices at 333 Main Street, Winnipeg, Manitoba), and the Attorneys General of the provinces of Ontario, Quebec, Alberta, Saskatchewan, British Columbia and Manitoba, be notified of the hearing of the argument of the said case by sending to each of them by registered letter on or before the 26th day of February, 1926, a notice of hearing of the said reference and a copy of the said Order in Council together with a copy of the document marked "A," referred to therein, and of the schedules A to H inclusive, referred to in said document "A," as well also as a copy of this Order.

AND IT IS FURTHER ORDERED THAT the Attorney General of Canada, the Hudson's Bay Company, and the Attorneys General of the provinces aforesaid, be at liberty to file factums of their respective arguments on or before the 15th day of April, 1926, and that they be at liberty to appear personally or by counsel upon the argument of the said reference.

AND IT IS FURTHER ORDERED THAT notice of the said reference be given in the Canada Gazette on or before the 6th day of March, A.D., 1926.

(Sgd.) P. B. MIGNAULT  
J.

#### No. 4.

#### Notice of Reference.

(Published in Canada Gazette, Feb. 27th, 1926, at pp. 2414-15.)

TAKE NOTICE that questions have arisen as to the power of the Parliament of Canada and of the Government of Canada over the precious metals, gold and silver in, under or upon certain lands of The Governor and Company of Adventurers of England trading into Hudson's Bay, commonly called the Hudson's Bay Company (hereinafter called the Company), and as to the ownership of the said precious metals, which questions depend for their solution in part upon the provisions of a Deed of Surrender bearing date 19th day of November, 1869, whereby the Company did surrender to Her late Majesty, upon certain terms and conditions, all the rights of government and other rights, privileges, liberties, franchises, powers and authorities granted or purported to be granted to the Company by certain Letters Patent granted by His late Majesty King Charles II to the Company, bearing date 2nd May, 1670, and also all the lands and territories within Rupert's Land (except and subject as in the said terms and conditions mentioned) granted or purported to be granted to the Company by the said Letters Patent, and also upon an Order of Her late Majesty in Council, bearing date 23rd day of June, 1870,

*In the  
Supreme  
Court of  
Canada.*

No. 3.  
Order for  
inscription  
of Reference  
and Direc-  
tions,  
20th Febru-  
ary 1926—  
*continued.*

No. 4.  
Notice of  
Reference,  
24th Febru-  
ary 1926.

*In the  
Supreme  
Court of  
Canada.*

No. 4.  
Notice of  
Reference,  
24th Febru-  
ary 1926—  
*continued.*

whereby Rupert's Land and the North West Territories were admitted into the Dominion of Canada.

AND FURTHER TAKE NOTICE that, it having been agreed between counsel for the Government of Canada and the said Company that it was advisable to refer the matters in question to the Supreme Court of Canada, the Governor General in Council did, by Order-in-Council of the 26th January, 1926 (P. C. 108), refer the following questions to the Supreme Court of Canada for hearing and consideration, under the authority of the Supreme Court Act :—

1. In whom, after the acceptance of the said surrender and the passing of the said Order in Council of the 23rd day of June, 1870, were vested the precious metals, gold and silver, in, under or upon, the lands possessed and occupied at the date of the said surrender as posts or stations, whether in Rupert's Land or any other part of British North America, by the Company, its officers or agents, whether in the Crown, represented by the Dominion of Canada, or in the Company? 10

2. In whom were vested the precious metals, gold and silver, in, under or upon the blocks of land adjoining the posts or stations of the Company in any part of British North America, not comprised in Canada and British Columbia, selected by the Company, whether in the Crown, represented by the Dominion of Canada or in the Company :— 20

(a) Upon the selection by the Company of the said blocks of land.

(b) Upon the issue to the Company of the Crown patents for the said blocks of land.

3. In whom were vested the precious metals, gold and silver, in, under or upon, the sections of land or parts thereof in the said fertile belt which were vested in the Company by notification, upon such notification, whether in the Crown represented by the Dominion of Canada, or in the Company? 30

4. In whom were vested the precious metals, gold and silver, in, under or upon the land granted to the Company by letters patent from the Crown upon the issue thereof :—

(a) In satisfaction of the Company's one-twentieth of the land in fractional townships, or in townships broken by lakes.

(b) In lieu of lands allotted to the Company but found to be settled upon.

5. In whom were vested the precious metals, gold and silver, in, under or upon, the lands granted to the Company by letters patent in lieu of land in which the Company relinquished and surrendered its rights to the Crown upon the issue of such patents. 40

6. In whom were vested the precious metals, gold and silver, in, under or upon, the land granted to the Company by letters patent in lieu of

land conveyed by the Company to the Crown upon the issue of such patents?

*In the  
Supreme  
Court of  
Canada.*

7. If in any of such cases the precious metals, gold and silver, were vested in the Company, did the repeal of section 37 of The Dominion Lands Act, 1879, Chapter 31 of 42 Victoria, by section 6 of Chapter 26 of 43 Victoria, or the enactment of section 43 of Chapter 17 of 46 Victoria, or of The Dominion Lands Act, Chapter 20 of 7 and 8 Edward VII, or any other enactment affect the ownership of the said precious metals in such case?

No. 4.  
Notice of  
Reference,  
24th Febru-  
ary 1926—  
*continued.*

10 Dated at Ottawa this 24th day of February, 1926.

(Signed) W. STUART EDWARDS,  
*Deputy Minister of Justice.*

Notice to the same effect sent to :—

The Attorneys-General of Ontario, Quebec, Alberta, Saskatchewan, British Columbia and Manitoba; and to Messrs. Munson, Allan, Laird, Davis, Haffner and Hobkirk, solicitors for the Hudson's Bay Co., Winnipeg, Man.

#### No. 5.

#### Order in Council (P.C. 1561) amending Reference.

20 *Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 12th October, 1926.*

No. 5.  
Order in  
Council  
(P.C. 1561)  
amending  
Reference,  
12th Octo-  
ber 1926.

The Committee of the Privy Council have had before them a report, dated 5th October, 1926, from the Minister of Justice, with reference to the questions referred to the Supreme Court of Canada by Order in Council of the 26th January, 1926 (P.C. 108), regarding the precious metals in, under or upon certain lands of the Hudson's Bay Company.

30 The Minister, after having consulted with and obtained the approval of the Solicitors for the Hudson's Bay Company, considers it expedient that the said questions be amended in the manner hereinafter set forth.

The Minister therefore recommends :—

1. That the document marked "A" attached to the Order in Council of the 26th January, 1926 (P.C. 108), being the statement of facts and questions submitted for decision, be amended by striking out the first three lines and questions numbers 1 and 2 in paragraph 11 thereof and substituting therefor the following :

" 11. Therefore it is desired to refer for hearing and consideration to the Supreme Court of Canada certain questions which, for the



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Order in  
Council  
(P.C. 1561)  
amending  
Reference,  
12th Octo-  
ber 1926—  
*continued.*

sake only of convenience and not as intending to waive, release or affect any rights or claims of any party, are confined to lands in the area now included in the Northwest Territories and in the provinces of Alberta, Saskatchewan and Manitoba, the said questions being as follows :

1. In whom, after the acceptance of the said surrender and the passing of the said Order in Council of the 23rd day of June, 1870, were vested the precious metals, gold and silver, in, under or upon the lands in the said area possessed and occupied at the date of the said surrender as posts or stations by the Company, its officers or agents, whether in the Crown represented by the Dominion of Canada or in the Company? 10

2. In whom were vested the precious metals, gold and silver, in, under or upon the blocks of land adjoining the said posts or stations of the Company and selected by the Company, whether in the Crown represented by the Dominion of Canada or in the Company :

(a) Upon the selection by the Company of the said blocks of land.

(b) Upon the issue to the Company of the Crown patents for the said blocks of land? ” 20

2. That Your Excellency in Council may be pleased to declare that it is not intended by said reference to raise any issues as between the Dominion and any Province, and that so far as any lands in the Province of Manitoba are concerned questions numbers 1, 2 and 3 may be answered as if the words “represented by the Dominion of Canada” where they occur after the word “Crown” in each of said questions were struck out and that in answering any of the questions referred it will be sufficient to state what are the rights of the Crown and the Company, respectively, without indicating whether any of the rights of the Crown are vested in the Dominion or the Province. 30

The Committee concur in the foregoing and submit the same for Your Excellency's approval.

E. J. LEMAIRE,  
*Clerk of the Privy Council.*

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## No. 6.

## Order for inscription of Reference and Directions.

## IN THE SUPREME COURT OF CANADA.

Before the Right Honourable F. A. ANGLIN, Chief Justice, Friday, the  
31st day of December, A.D. 1926.

IN THE MATTER OF A REFERENCE AS TO THE POWER OF THE PARLIAMENT OF  
CANADA AND OF THE GOVERNMENT OF CANADA WITH RESPECT TO  
PRECIOUS METALS IN, UNDER OR UPON CERTAIN LANDS OF THE HUDSON'S  
BAY COMPANY, AND AS TO THE OWNERSHIP OF SUCH PRECIOUS METALS.

*In the  
Supreme  
Court of  
Canada.*

No. 6.  
Order for  
inscription  
of Reference  
and Direc-  
tions,  
31st Dec-  
ember 1926.

10 Upon the application of the Attorney General of Canada for directions as to the inscription for hearing of the case relating to the above questions referred by His Excellency the Governor General, for hearing and consideration by the Supreme Court of Canada under the provisions of section 60 of the Supreme Court Act, upon hearing read the Order-in-Council dated the 26th day of January, 1926, (P. C. 108) and the document "A" referred to therein, setting forth the said questions, upon hearing read the Order-in-Council dated 12th October, 1926, (P. C. 1561), upon reading the affidavit of W. Stuart Edwards filed herein, and upon hearing what was alleged by counsel for the applicant :

20 IT IS ORDERED that the said case be inscribed for hearing first on the Western list for the February session, 1927.

AND IT IS FURTHER ORDERED that Messrs. Munson, Allan, Laird, Davis, Haffner & Hobkirk, solicitors for the Hudson's Bay Company (having their offices at 333 Main Street, Winnipeg, Manitoba) and the Attorneys-General of the Provinces of Manitoba, Alberta and Saskatchewan, be notified of the hearing of the argument of the said case by sending to each of them by registered letter on or before the 5th day of January, 1927, a notice of hearing of the said reference, as well also as a copy of this order.

30 AND IT IS FURTHER ORDERED THAT the Attorney-General of Canada, the Hudson's Bay Company, and the Attorneys-General of the Provinces of Manitoba, Alberta and Saskatchewan be at liberty to file factums of their respective arguments on or before the 20th day of January, 1927, and that they be at liberty to appear personally or by counsel upon the argument of the said reference.

AND IT IS FURTHER ORDERED that notice of the said reference be given in the Canada Gazette on or before the 15th day of January, 1927.

FRANK A. ANGLIN,  
C.J.C.

*In the  
Supreme  
Court of  
Canada.*

**No. 7.**

**Notice of Hearing.**

**IN THE SUPREME COURT OF CANADA.**

No. 7.  
Notice of  
Hearing,  
3rd January  
1927.

IN THE MATTER OF A REFERENCE AS TO THE POWER OF THE PARLIAMENT OF CANADA AND OF THE GOVERNMENT OF CANADA WITH RESPECT TO PRECIOUS METALS IN, UNDER OR UPON CERTAIN LANDS OF THE HUDSON'S BAY COMPANY, AND AS TO THE OWNERSHIP OF SUCH PRECIOUS METALS.

Take notice that the reference herein has, by order of the Right Honourable Frank A. Anglin, Chief Justice of the Supreme Court of Canada, been inscribed for hearing first on the Western list for the February session, 1927, and you are hereby notified of the hearing of the said reference pursuant to the terms of the said order, copy of which is hereto annexed. 10

Dated at Ottawa this 3rd day of January, A.D. 1927.

W. STUART EDWARDS,

*Deputy Minister of Justice.*

Department of Justice,

Ottawa, Ont.

To—

The Attorney General of the Province of Alberta, Edmonton, Alberta.  
The Attorney General of the Province of Saskatchewan, Regina, Sask. 20  
The Attorney General of the Province of Manitoba, Winnipeg, Man.  
Messrs. Munson, Allan, Laird, Davis, Haffner & Hobkirk, Solicitors for  
the Hudson's Bay Company, 333 Main Street, Winnipeg, Man.

No. 8.  
Notice of  
Hearing,  
7th January  
1927.

**No. 8.**

**Notice of Hearing.**

(Published in Canada Gazette, January 15, 1927.)

**IN THE SUPREME COURT OF CANADA.**

IN THE MATTER OF A REFERENCE AS TO THE POWER OF THE PARLIAMENT OF CANADA AND OF THE GOVERNMENT OF CANADA WITH RESPECT TO PRECIOUS METALS IN, UNDER OR UPON CERTAIN LANDS OF THE HUDSON'S BAY COMPANY, AND AS TO THE OWNERSHIP OF SUCH PRECIOUS METALS. 30

Pursuant to an order made in the above matter on the 31st December, 1926, by the Right Honourable Frank A. Anglin, Chief Justice of the Supreme Court of Canada, notice is hereby given that by an Order-in-Council dated the 26th January, 1926, (P. C. 108), as varied by Order-in-Council of the 12th October, 1926, (P. C. 1561), His Excellency the Governor



General referred to the Supreme Court of Canada, for hearing and consideration, pursuant to section 60 of the Supreme Court Act, the above questions, and that the reference has been inscribed for hearing first on the Western list for the February sittings, 1927.

Dated at Ottawa, this 7th day of January, A.D. 1927.

W. STUART EDWARDS,  
*Deputy Minister of Justice.*

*In the  
Supreme  
Court of  
Canada.*

No. 8.  
Notice of  
Hearing,  
7th January  
1927—  
*continued.*

#### No. 9.

#### Factum of Hudson's Bay Company.

No. 9.  
Factum of  
Hudson's  
Bay Com-  
pany.

#### IN THE SUPREME COURT OF CANADA.

10

IN THE MATTER OF A REFERENCE AS TO THE POWER OF THE PARLIAMENT OF CANADA AND OF THE GOVERNMENT OF CANADA WITH RESPECT TO PRECIOUS METALS IN, UNDER OR UPON CERTAIN LANDS OF THE HUDSON'S BAY COMPANY, AND AS TO THE OWNERSHIP OF SUCH PRECIOUS METALS.

#### INTRODUCTION.

This is a reference to the Court by the Governor-in-Council under section 60 of The Supreme Court Act, relating to the ownership of the precious metals in certain lands of the Hudson's Bay Company, and it, under the order of Honourable Mr. Justice Mignault of the 20th of February, 1926, (Record, p. 6) files this factum.

20

The Order-in-Council P.C. 108 of the 26th of January, 1926 (Record, p. 1), and the schedules thereto concisely state the facts.

#### CHARTER OF COMPANY AND GRANT OF PRECIOUS METALS.

By Letters Patent of 2nd of May, 1670, King Charles II incorporated the Company and granted to it the precious metals in the lands in question (Record, pp. 72-83). The first recital refers to the expedition undertaken by the incorporators of the Company "for finding some trade for furs, minerals and other considerable commodities" (Record, p. 72, l. 19). The grant in part reads as follows: "Now Know Ye, that We being desirous to promote all Endeavours tending to the publick Good of our People, and to encourage the said Undertaking, Have of Our Special Grace, certain Knowledge, and mere Motion, given, granted, ratified and confirmed, and by these presents for Us, Our Heirs and Successors, do give, grant, ratify and confirm unto our said Cousin Prince Rupert, Christopher, Duke of Albemarle, William, Earl of Craven, Henry, Lord Arlington, Anthony, Lord Ashley, Sir John Robinson, Sir Robert Vyner, Sir Peter Colleton, Sir

30

*In the  
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pany—con-  
tinued.

Edward Hungerford, Sir Paul Neele, Sir John Griffith, and Sir Philip Carteret, James Hayes, John Kirke, Francis Millington, William Prettyman, John Fenn, and John Portman, that they, and such others as shall be admitted into the said Society as is hereafter expressed, shall be one Body Corporate and Politique, in Deed and in Name by the Name of The Governor and Company of Adventurers of England, Trading into Hudson's Bay, and them by the Name of the Governor and Company of Adventurers of England, Trading into Hudson's Bay, one Body Corporate and Politique, in Deed and in Name, really and fully forever, for Us, Our Heirs and Successors, WE DO make, ordain, constitute, establish, confirm, and declare, by these presents, and that by the same Name of Governor and Company of Adventurers of England, Trading into Hudson's Bay, they shall have perpetual Succession, and that they and their Successors by the Name of the Governor and Company of Adventurers of England, trading into Hudson's Bay, be, and at all Times hereafter shall be, personable and capable in Law to have, purchase, receive, possess, enjoy and retain, Lands, Rents, Privileges, Liberties, Jurisdictions, Franchises, and Hereditaments, of what kind, Nature, or Quality, soever they be, to them and their Successors; and also to give, grant, demise, alien, assign, and dispose, Lands, Tenements, and Hereditaments, and to do and execute all and singular other Things by the same Name that to them shall or may appertain to do." (Record, p. 72, l. 33.) Further, at p. 77, l. 14 :—" And to the End the said Governor and Company of Adventurers of England, trading into Hudson's Bay, may be encouraged to undertake, and effectually to prosecute the said design of Our more especial Grace, certain Knowledge, and mere motion, WE HAVE given, granted and confirmed, and by these Presents, for Us, our Heirs and Successors, do give, grant and confirm, unto the said Governor and Company, and their Successors, the sole Trade and Commerce of all these Seas, Streights, Bays, Rivers, Lakes, Creeks and Sounds, in whatsoever Latitude they shall be, that lie within the Entrance of the Streights commonly called Hudson's Streights, together with all the Lands and Territories upon the Countries, Coasts and Confines of the Seas, Bays, Lakes, Rivers, Creeks and Sounds aforesaid, that are not already actually possessed by or granted to any of our Subjects or possessed by the Subjects of any other Christian Prince or State, with the Fishing of all Sorts of Fish, Whales, Sturgeons, and all other Royal Fishes, in the Seas, Bays, Inlets and Rivers within the Premises, and the Fish therein taken, together with the Royalty of the Sea upon the Coasts within the Limits aforesaid, and all Mines Royal, as well discovered as not discovered, of Gold, Silver, Gems, and precious Stones, to be found or discovered within the Territories, Limits, and Places aforesaid, and that the said Land be from henceforth reckoned and reputed as one of our Plantations or Colonies in America, called Rupert's Land. AND FURTHER WE DO by these Presents, for Us, Our Heirs and Successors, make, create, and constitute, the said Governor and Company for the Time being, and their Successors, the true and absolute Lords and Proprietors of the same Territory, Limits and Places aforesaid, and of all other the Premises, SAVING ALWAYS the Faith, Allegiance and

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tinued.

Sovereign Dominion due to us, Our Heirs and Successors for the same TO HAVE, HOLD, possess and enjoy the said Territory, Limits and Places, and all and singular other the premises, hereby granted as aforesaid, with their, and every of their Rights, Members, Jurisdictions, *Prerogatives, Royalties* and Appurtenances whatsoever, to them the said Governor and Company, and their Successors for ever TO BE HOLDEN of Us, Our Heirs and Successors, as of Our Manor of East Greenwich in our County of Kent, in free and common Socage, and not in Capite or by Knight's Service." At p. 81, l. 26, there is an express reference to the Company's forts, factories colonies and trade. Under this express and definite language all mines royal of gold, silver, gems and precious stones, whether discovered or not became vested in the Company. For this purpose such language was apparently required in view of the *Case of Mines; Regina v. Earl of Northumberland*, 1568, 1 Plowden, 310, 75 E.R. 472, 17 English Ruling Cases, 393. In that case all the Justices of England and the Barons of the Exchequer unanimously resolved: "First, all the Justices and Barons agreed that by the law all mines of gold and silver within the realm, whether they be in the lands of the Queen, or of subjects, belong to the Queen by prerogative, with liberty to dig and carry away the ores thereof, and with other such incidents thereto as are necessary to be used for the getting of the ore. . . . Also they all agreed that a mine royal, whether of base metal containing gold or silver, or of pure gold and silver only, may by the grant of the King be severed from the Crown, and be granted to another, for it is not an incident inseparable to the Crown, but may be severed from it by apt and precise words."

Referring to this decision in *Woolley v. A.G. of Victoria*, L.R. 2 A.C. 163, Sir James W. Colville at 166 said: "Now whatever may be the reasons assigned in the case in Plowden for the rule thereby established, and whether they approve themselves or not to modern minds, it is perfectly clear that ever since that decision it has been settled law in England that the prerogative right of the Crown to gold and silver found in mines will not pass under a grant of land from the Crown, unless by apt and precise words the intention of the Crown be expressed that it shall pass."

This, then, is the starting point, that in 1670 the precious metals in the lands of the Company were expressly granted to it. When thus granted, they became, while in the Company part of the land the same as other metals.

#### THE BRITISH NORTH AMERICA ACT, 1867.

Section 109 of this Act reads: "All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all sums then due or payable for such lands, Mines, Minerals or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same."



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tinued.

In *A.G. of Ontario v. Mercer*, L.R. 8 A.C. 767, it was held that these words included royalties in respect of lands.

Section 146 provided for the admission of Rupert's Land and the North-Western Territory into the Union, and enacted that the provisions of any Order in Council in that behalf should have effect as if enacted by the Parliament of Great Britain and Ireland (Record, p. 117).

#### RUPERT'S LAND ACT, 1868.

This statute is in Schedule "B" to the Reference (Record, p. 85). It recites the Company's charter, the British North America Act, and that it is expedient that the lands of the Company should be surrendered to Her Majesty "upon such terms and conditions as may be agreed upon by and between Her Majesty and the said Governor and Company." 10

Section 2 defines Rupert's Land, for the purposes of the Act, as including "the whole of the lands and territories held or claimed to be held by the said Governor and Company."

Section 3 enables the Company to surrender and Her Majesty to accept "*all or any of the lands . . . upon such terms and conditions as shall be agreed upon*" between them.

Section 4 enacts that the rights so surrendered shall be extinguished.

Section 5 makes provision for admitting Rupert's Land into the Dominion of Canada, and for the Parliament of Canada to make laws therein. 20

#### SURRENDER BY COMPANY, 1869.

This also is contained in Schedule "C" to the Reference, and bears date the 19th of November, 1869 (Record, p. 94). It recites (1) the charter of the Company; (2) the exercise and enjoyment of such charter and other rights; (3) the British North America Act, 1867; (4) Rupert's Land Act, 1868; (5) the agreement between Her Majesty and the Company "to terms and conditions upon which the said Governor and Company shall surrender to Her said Majesty, pursuant to the provisions in that behalf in the 'Rupert's Land Act, 1868,' contained, all the rights of Government and other rights, privileges, liberties, franchises, powers, and authorities, and all the lands and territories (*except and subject as in the said terms and conditions expressed or mentioned*) granted or purported to be granted by the said Letters Patent" (Record, p. 95, l. 29); (6) the said terms and conditions of the surrender set forth in clauses numbered 1 to 14; and (7) the intention to make the surrender in pursuance of such agreement and *upon the said terms and conditions*. 30

Then "in pursuance of the powers and provisions of the 'Rupert's Land Act, 1868,' and *on the terms and conditions aforesaid*, and also on condition of this surrender being accepted pursuant to the provisions of that Act, the said Governor and Company do hereby surrender to the Queen's Most Gracious Majesty, *all the rights of Government, and other rights, privileges, liberties, franchises, powers and authorities*, granted or purported to be granted to the said Governor and Company by the said recited Letters 40

Patent of His Late Majesty King Charles the Second, and also all similar rights which may have been exercised or assumed by the said Governor and Company in any parts of British North America, not forming part of Rupert's Land or of Canada, or of British Columbia, and *all the lands and territories within Rupert's Land (except and subject as in the said terms and conditions mentioned) granted or purported to be granted to the said Governor and Company by the said Letters Patent.*" (Record, p. 97, l. 24.)

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#### NO SURRENDER OF PRECIOUS METALS.

The Company's Charter, as already shown, granted the precious  
10 metals to the Company (Record, p. 77, l. 31). They did not become vested in it by reason of the grant of land, but by reason of the grant of them in express words. While precious metals remain in the Crown they are not held as part of the land, or as incident to the land, but as prerogatives of the Crown. Upon this the following authorities are cited:—

*A.G. of British Columbia v. A.G. of Canada*, L.R. 14 A.C. 293. Lord Watson for the Judicial Committee at 302:

“According to the law of England, gold and silver mines, until they have been aptly severed from the title of the Crown, and vested in a subject, are not regarded as partes soli, or as incidents of the  
20 land in which they are found. Not only so, but the right of the Crown to land, and the baser metals which it contains, stands upon a different title from that to which its right to the precious metals must be ascribed. In the Mines Case, 1 Plowd. 336, all the justices and barons agreed that, in the case of the baser metals, no prerogative is given to the Crown; whereas ‘all mines of gold and silver within the realm, whether they be in the lands of the Queen or of subjects, belong to the Queen by prerogative, with liberty to dig and carry away the ores thereof, and with other such incidents thereto as are necessary to be used for the getting of the ore.’ In British Columbia  
30 the right to public lands, and the right to precious metals in all provincial lands, whether public or private, still rest upon titles as distinct as if the Crown had never parted with its beneficial interests; and the Crown assigned these beneficial interests to the Government of the Province, in order that they might be appropriated to the same state purposes to which they would have been applicable if they had remained in the possession of the Crown. Although the Provincial Government has now the disposal of all revenues derived from prerogative rights connected with land or minerals in British  
40 Columbia, these revenues differ in legal quality from the ordinary territorial revenues of the Crown. It therefore appears to their Lordships that a conveyance by the Province of ‘public lands,’ which is, in substance, an assignment of its right to appropriate the territorial revenues arising from such lands, does not imply any transfer of its interest in revenues arising from the prerogative rights of the Crown.”

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And at 305 :—

“ The exception created by the 11th Article of Union, from the rights specially assigned to the province by sect. 109, is of ‘ lands ’ merely. The expression ‘ lands ’ in that article admittedly carries with it the baser metals, that is to say, ‘ mines ’ and ‘ minerals, ’ in the sense of sect. 109. Mines and minerals, in that sense, are incidents of land, and, as such, have been invariably granted, in accordance with the uniform course of Provincial legislation, to settlers who purchased land in British Columbia. But *jura regalia* are not accessories of land ; and their Lordships are of opinion that the rights to which the Dominion Government became entitled under the 11th article did not, to any extent, derogate from the Provincial right to ‘ royalties ’ connected with mines and minerals under sect. 109 of the British North America Act.” 10

While the precious metals and the lands are vested in the one owner, other than the Crown, such metals are part of the land and pass from such owner by a grant absolute in terms, of the fee simple estate in the land : *Re St. Eugene Mining Company*, 7 B.C.R. 288, Drake J. at 289. In the Deed of Surrender the land surrendered is described as follows : “ All the lands and territories within Rupert’s Land (except and subject as in the said terms and conditions mentioned) granted or purported to be granted to the said Governor and Company by the said Letters Patent ” (Record, p. 97, l. 35). But, as pointed out, the letters patent did not grant or purport to grant the gold and silver as part of the land, and they did not pass from the Crown to the Company under such grant. They were granted as separate and distinct property and depended upon a different title from the title to the land. What the Company surrendered was thus the *land granted* which did not include the precious metals. There is therefore no grant, conveyance or surrender by the Company to the Crown of the precious metals. 20 30

The first part of the operative clause of the surrender covers governmental rights and privileges, and contains no words apt to convey these minerals. These words include the powers in the letters patent, just as the words “ lands and territories ” include those granted by the letters patent. There is also the word “ other ” to be considered and the *ejusdem generis* rule applies.

The ownership of precious metals by the owner of the land in which they are found is not a right, privilege, liberty, franchise, power or authority. In such a case it is part of his estate in the land. Even if it were a right while held by the Crown or a person other than the owner of the land, once it is vested in the owner of the land it merges in the land and becomes extinguished. 40

The language is not amplified by the addition of any words usually found in conveyances following the description of the parcels of land, such as “ together with the appurtenances, ” or “ together with all profits, privileges, rights and appurtenances to the said hereditaments belonging



or with the same or any part thereof held or enjoyed or appurtenant thereto." It is "all the lands and territories granted or purported to be granted to the said Governor and Company by the said letters patent." It should be construed in favour of the subject, and is of course not affected by any of our modern statutes providing Short Forms for conveyancing.

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The alternative interpretation, namely, that the Company by this deed conveyed to the Crown the gold and silver in the land surrendered, will be considered, but this is subject to the foregoing submission, and is not to prejudice it.

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## LAND OCCUPIED BY THE COMPANY.

One of the terms and conditions of the surrender was the following : "The Company to retain all the posts or stations now actually possessed and occupied by them or their officers or agents, whether in Rupert's Land or in any other part of British North America." clause 2 of conditions. (Record, p. 95, l. 45.) Under its charter the Company had express power to erect and build forts, garrisons, colonies, or plantations, towns or villages. (Record, p. 81, l. 22 to p. 82, l. 35.) A list of the posts or stations in part of the territory appears as a schedule to the deed of surrender (Record, p. 95, l. 45 to p. 96, l. 6, p. 98, l. 1 to p. 102, l. 24), and these number 119.

20

By "posts and stations" was meant not merely the buildings and equipment but the land possessed and occupied by the Company at such places, and the estate and interest therein then held by the Company, that is, a fee simple estate, with the right to the precious metals therein previously granted by the Crown. This land the Company was "to retain." It did not under the surrender ever pass from the Company at all.

Webster defines the word "retain" thus : "to continue to hold, have, use, recognize, etc.; to keep in possession, control, use custody, etc.; to keep, not to loose, part with, dismiss, or permit to escape."

30

The Trustee Act, 1888, cap. 59 of 51 and 52 Victoria, in section 8 refers to the proceeds of property "still retained by the trustee." Upon this Kekewich, J. *In Re Timmins, Nixon v. Smith*, L.R. 1902, 1 Ch. 176, at 185, said : "As I pointed out in the argument, the Legislature has carefully used the word 'retained' as meaning what it says, namely, money which is not merely in the eye of the law in the hands of the trustee, because he has never paid it away to a person entitled to give a discharge, but money which is really in his pocket in the sense that it is invested in his name, or in land belonging to him, or in the name of some other person as trustee for him. In order to say that it is 'retained,' you must be able to put your finger on the property or the proceeds and say that it is still under the control of the trustees."

40

Clearly the Company had and retained the precious metals in these lands so actually occupied in Rupert's Land. As to these situate outside of Rupert's Land, such as those in the North Western Territory, there is this consideration: a difference appears in the language of this condition in the surrender and in the Order-in-Council. In the former

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it is the posts "whether in Rupert's Land or any other part of British North America." (Record p. 95, l. 46.) In the latter it is the posts "in the North Western Territory" (Record p. 105, l. 23). The Company by the surrender retained all those posts it occupied in British North America. The Order-in-Council did not take anything from the Company. It was not intended that it should. But it confirmed in the Company the titles to the land actually occupied by it in British territory, and to the same extent as the land it owned under express grant from the Crown.

#### LAND ADJOINING THE POSTS.

Another condition of the Surrender is contained in clauses 2, 3 10 and 4, and was the following: (The Company) "may within twelve months after the acceptance of the said surrender select a block of land adjoining each of their posts or stations, within any part of British North America, not comprised in Canada and British Columbia in conformity, except as regards the Red River Territory, with a list made out by the Company and communicated to the Canadian Ministers, being the list in the annexed schedule." (Record, p. 95, l. 47 to p. 96, l. 6.) Clauses 3 and 4 contain provisions as to the size, location and shape of such blocks of land. The actual size of each block was fixed, except those at Upper Fort Garry and Lower Fort Garry; each was to front 20 on the river or road used as access to the post, and the dimensions were approximately fixed also. An actual survey was to be made with all convenient speed. It was impossible to describe these parcels of land more definitely at the time, but that fact did not affect the Company's title to them in the meantime. In clauses 2, 3 and 4, the phrase used is "a block of land adjoining each of their posts or stations;" "each block," "the blocks." In clauses 8 and 9 these blocks of land are again mentioned, and there the language is "any block of land *reserved* to the Company." (Record, p. 96, l. 37, to p. 97, l. 3.) Under this condition the Surrender did not divest the Company of its then title to such blocks 30 of land, but such title was reserved to the Company pending the survey and selection. This condition applied to posts not only in Rupert's Land but in any part of British North America excepting Canada and British Columbia. There is no suggestion that the title of the Company to the land without Rupert's Land was different to that within. The word "land" as applied to a parcel within Rupert's Land included these precious minerals, and the word should be given the same meaning in all cases in the document.

In *Courtauld v. Legh*, L.R. 4 Ex. 126, Cleasby, B. said at 130: "It is a sound rule of construction to give the same meaning to the same 40 words occurring in different parts of an act of parliament or other document." Other authorities to this effect are:

*Ridgeway v. Munkittrick*, 1841, 1 Drury & Warren, 84, 93.

*In Re Birks, Kenyon v. Birks*, L.R. 1900, 1 Ch. 417. Lindley, M.R. 418.

## CROWN PATENTS FOR POSTS AND LAND ADJOINING THE POSTS.

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Patents were issued to the Company for the land occupied as posts and for the land selected adjoining the various posts: Paragraph 5 of the Reference (Record, p. 3, l. 22.) The patent for the 100 acres at Fairford (p. 99, l. 9) is part of the Record, p. 110, and its language is important. Among other recitals it reads:

10      "And whereas the block of land to be *retained* by the Company adjoining the Post or Station hereinafter mentioned has been duly selected, surveyed and set out, and it is expedient that Letters Patent granting to the Company such block of land should be issued."

These patents were issued as evidence of the Company's title, and for purposes of registration and of specifying the boundaries. The Company's title was good without a patent.

In *Calgary and Edmonton Land Co. v. The King*, Coutlee's Supreme Court Cases 271, the question before this Court was as to the right of the Dominion to reserve mines and minerals from patents of land forming part of a railway land grant. Chief Justice Taschereau said at 275:

20      "Then section eight of the regulations of September, 1889, applies to patents to be issued in the ordinary course. The appellants' title is perfect without a patent. The patent is only evidence of the allotment. It is a parliamentary title under a contract. The subsequent allotment by the Department of the Interior and the Governor-in-Council of the particular lands so granted could not contain any derogation from that contract either expressly or impliedly."

This judgment was approved by the Privy Council, L.R. 1904 A.C. 765, in the following language of Lord Lindley at 771:

30      "Upon this question their Lordships concur with the Chief Justice and Girouard, J. in thinking that the special Act and Order in Council of June 27, 1900, are the governing documents."

## LAND IN FERTILE BELT.

A further condition was the following:

40      "The Company may, for fifty years after the surrender claim in any township or district within the Fertile Belt, in which land is set out for settlement, grants of land not exceeding one-twentieth part of the land so set out. The blocks so granted to be determined by lot, and the Company to pay a rateable share of the survey expenses, not exceeding 8 cents Canadian



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an acre. The Company may defer the exercise of their right of claiming the proportion of each township for not more than ten years after it is set out; but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it." (Record, p. 105, l. 40.)

Clause 6 gives the boundaries of the fertile belt, and 7 contains provisions which in effect extend the boundaries of land available.

Different expressions are used in the document with reference to this term or condition. We find these: "The Company may . . . claim in any township or district . . . grants of land;" "the blocks so granted;" "their right of claiming *their proportion* of each township or district;" "the Company may *take* their one twentieth of any such township;" "portion of *land* coming to them of townships established." 10

The land referred to in these clauses was land of the same estate as the Company held, and with all the incidents then belonging to it. There is nothing to suggest the contrary view. This land is treated in clause 7 as of equal value per acre. To except from this land the precious minerals would necessitate the giving to the word "land" or the equivalent in clauses 5 and 7, a different and more limited meaning from that required in clauses 2, 3, 4, 8 and 9, which as already shown 20  
offends against the rule of construction.

The nature of the instrument in which the word occurs has to be considered in determining its meaning. If the document were a grant from the Crown, the onus would lie upon the Company to prove that by necessary implication no reservation to the Crown of gold and silver was intended; while if the document is primarily not in the nature of a grant, the word would bear the meaning contended for by the Company and the onus would be upon the Crown to show that by necessary 30  
implication gold and silver are reserved.

Assuming for the present purpose that these conditions are to be considered as grants, the Company submits that they constitute a small and relatively unimportant part of the instrument, and that they do not determine the nature of the instrument. It cannot be argued that its primary object was a grant by the Crown to the Company. The predominating purpose was undoubtedly to surrender the governing power in Rupert's Land and incidentally of part of the land. The change involved a surrender by the former governing power of the ownership of a portion of the land in addition to all the powers of government. It is analogous to a treaty between sovereign powers, 40  
and should be so interpreted. Even assuming that conditions two and five constitute a re-grant, it cannot therefore be said that these two relatively small provisions impress the whole instrument with the nature of a grant from the Crown, so as to impart to all the terms therein the technical meaning which they would bear in such a grant.

In *Lion Insurance Assoc. v. Tucker* (1883) L.R. 12 Q.B.D. 176, Brett, M.R. at p. 186 said :

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“Whenever you have to construe a statute or document, you do not construe it according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject matter with regard to which they are used, unless there is something which obliges you to read them in a sense which is not their ordinary sense in the English language as so applied. That, I take it, is the cardinal rule.”

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The subject matter here is not a grant calling for a narrow interpretation of the words, but a transaction involving the transfer of the widest and most general powers from one governing body to another, and calling for an interpretation of terms in their most general and inclusive sense.

In *Brett v. Brett* (1826) 3 Adams, 210, Sir John Nichol said that “to arrive at the true meaning of any particular phrase in a statute, the particular phrase is not to be viewed detached from its context in the statute; it is to be viewed in connection with its whole context, meaning by this as well the title and preamble as the purview or enacting part of the statute.”

20

In *In re Jodred* L.R. 44 Ch. D. 590, Lord Halsbury at p. 605 said :

“For myself, I am prepared to look at the instrument such as it is, to see the language that is used in it; to look at the whole of the document and not to part of it; and having looked at the whole of the document, to see (if I can) through the instrument what was the mind of the testator. Those are general principles for the construction of all instruments, and to that extent it may be said that they are canons of construction.”

30

There is therefore no justification for separating this condition from the rest of the document, and considering it as a distinct entity. These clauses are part of a larger whole and must be considered with reference to the other parts and the main purpose of the whole. “Land” therefore cannot be restricted in its meaning to the technical significance it would bear in an instrument, the chief or only object of which would be to evidence a grant from the Crown. And if its meaning cannot be thus restricted it must bear its ordinary and primary meaning, or a meaning consistent with the rest of the surrender. In this case its ordinary and primary meaning is consistent with the rest of the document and includes the precious metals.

40

In *Bruner v. Moore* L.R. 1 Ch. 305, Farwell, J. at 310 said :

“It is therefore a question of construction in each case, to which the ordinary rules of construction apply, namely, that words

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must bear their ordinary primary meaning unless the context of the instrument read as a whole, or surrounding contemporaneous circumstances show that the secondary meaning expresses the real intention of the parties, or unless the words are used in connection with some place, trade, or the like, in which they have acquired the secondary meaning as their customary meaning *quoad hoc*. This is a question of fact which (unless so often proved as to be judicially recognized) has to be proved by evidence."

In *Grey v. Pearson* (1857) 6 H.L.C. 61, Lord Wensleydale said at p. 106 :

"In construing wills, and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further. This is laid down by Mr. Justice Burton, in a very excellent opinion, which is to be found in the case of *Warburton v. Loveland* (1828) 1 Hud. & B. (Ir.) 623 at p. 648."

The meaning of the word "land" contended for by the Company in these clauses is the ordinary primary meaning of the word, and there is nothing in the context reading the deed as a whole, or in the surrounding contemporaneous circumstances to indicate that any other meaning should be given to the word. Nor would this meaning lead to any absurdity, repugnance or inconsistency with the rest of the deed. On the contrary, it is the meaning which the word "land" or "lands" obviously bears in all other parts of the document, and the results arising from giving the words this meaning are perfectly consistent with the purpose and objects of the deed, and with all its provisions.

When the Parliament of Canada for the first time enacted legislation affecting these lands it placed as the heading of the sections in the statute this: "Lands Reserved by the Hudson's Bay Company": section 17, chapter 23, 1872: (Record, p. 126, l. 5). It then recited that "the said Company is entitled to one-twentieth of the lands."

This strongly supports the view that the Company's share of land in the fertile belt did not pass from it to the Crown, and then revest in it by way of regrant, but was reserved in and remained in it throughout. Upon this view there would be no question of the ownership of precious minerals in these lands.

No question is submitted to the Court upon this point, as by agreement the provisions as to the particular land falling to the Company as its share under these clauses were changed.



# CONFIRMATION BY CROWN OF COMPANY'S GRANTS.

Clause 10 of these conditions is as follows :

" All titles to land up to the eighth day of March, one thousand eight hundred and sixty-nine, conferred by the Company, are to be confirmed." (Record, p. 97, l. 4.)

Provision for implementing this term was made by Parliament in The Manitoba Act, cap. 3, 1870, sec. 32 (Record, p. 119, l. 37). Grants by the Company of land prior to the Surrender carried the precious metals, if any, unless expressly reserved, and the confirmation by the Crown undertaken in this clause 10, and provided for by this legislation would not deprive the grantee of that ownership, but merely confirm it. It is unlikely that the title of the Company to any parcel of land retained or reserved under the surrender, either as part of the land actually occupied, or to be selected adjoining that occupied, or in the fertile belt, would be less than the title conferred by the Company upon its immediate grantees. To create such a position some different language would be required.

## EXCEPTIONS FROM THE SURRENDER.

The Surrender is made " on the terms and conditions aforesaid." (Record, p. 97, l. 25.) Further, there is interjected in the description of the land surrendered the phrase "*except and subject as in the said terms and conditions.*" (Record, p. 97, l. 36.) Thus the surrender of the governmental and other such rights, and also of the land is upon these terms and conditions, but the surrender of the land further excepts and is made subject to them. The land so excepted was in fact never conveyed to the Crown.

In *Duke of Hamilton v. Graham*, L.R. 2 H.L.(Sc.) 166, Lord Chancellor Hatherley said at p. 168 :

" By the law of England when you demise a property, excepting a certain part of it, there is no demise of the part excepted. Thus minerals excepted remain in the lessor. The lessee takes no interest or right whatever in them."

*Armour on Titles*, Third Edition, p. 235 :

" An exception must be of a part of the subject of the grant which does not pass thereby but is severed and retained by the grantor."

If the phrase " all the lands and territories within Rupert's Land " includes the precious metals as incidents thereof the land excepted would also include them and those in the lands of the Company would thus never pass to the Crown under this deed.

The surrender was made by the Company upon the request of Canada, evidenced by the Addresses of Parliament, approved as they

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were by Her Majesty (Record, p. 103, l. 47), and not at the solicitation of the Company. Under such circumstances it should be construed in favor of the subject: 6 *Halsbury*, title Constitutional Law, p. 480, par. 748:

"The grant will also be construed in favour of the subject where it is expressed to be made, not at the solicitation of the latter, but (as is frequently the case) 'ex speciali gratia, certa scientia, et mero motu regis.'

"If the grant is for favourable consideration it must be construed strictly in favour of the grantee, for the honour of the King."

In *Doe d. Devine v. Wilson*, 10 Moo. P.C. 502, and in *Hyatt v. Mills*, 20 O.R. 351; 19 O.A.R. 329, it was decided that a patent of land is to be upheld rather than avoided, and is to be construed most favourably for the grantee.

In *Clark v. Bonnycastle*, 3 U.C.Q.B. (O.S.) 528, it was held at 544 that grants from the Crown either for valuable consideration or of special favour are to be construed in the same manner as deeds from subject to subject. Sherwood, J. at 544, said:

"For the removing of this doubt, it will be necessary to examine the rule of construction applicable to grants from the crown; which appears to be, that grants from and to the crown must in general be construed most favourable for the king.—2 Roll. 219; 2 Co. 24; 5 Co. 56; Plow. 243. But there are several exceptions to this rule. One of these is, that the construction shall be in favour of the grantee, when the grant is made for a valuable consideration, or when it is made ex speciali gratia certa scientia et mero motu regis.—1 Co. 40; 10 Co. 112; 2 Inst. 466; 6 Co. 56a; 10 Co. 65; Plow. 337; 3 Leon. 249. The grant to Elsworth is of this latter description; and the rule of construction applicable to this class, I take to be the same in substance with regard to grants by indenture from one subject to another, in which the intention of the parties is the true criterion.—9 Co. 131a; 10 Co. 67 B; Com. Dig.; Grant. 12: Bac. Ab. 604."

If it should be argued that the land occupied by the posts, the land adjoining the posts, and the one-twentieth share of land in the fertile belt were not excepted from the surrender, but passed from the Company to the Crown subject to the Company's right to obtain such land by way of regrant, the answer is that this ignores the use of the words "except," "retained," and "reserved," and these rules of construction, and does not give proper effect to the language of the document.

#### KNOWLEDGE OF MINERALS.

All parties to the transfer had at that time before their minds the minerals in Rupert's Land and the North-Western Territory as a valuable

asset, and their existence was, in fact, given as one of the reasons for the transfer. This is shown by the reference to them in the first address of the House of Commons of the 17th December, 1867, which set forth as one of the reasons for the transfer "the development of the mineral wealth which abounds in the region of the North-West." (Record, p. 84, l. 16.)

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In a Memorial of Thomas Spence and others of the Red River Settlement to Her Majesty the Queen of the 3rd of December, 1869, praying that part of Rupert's Land known as Assiniboia be created a Crown Colony, this sentence occurs :

"While notwithstanding our superior climate, and vast agricultural and mineral resources, we remain helpless to advance in developing the same, having no outlet or market, besides being entirely indebted to the enterprise of a foreign power, for any postal, or other communication with the outer world."

Dominion Archives, M. 155, p. 348, printed in publications of the Canadian Archives No. 9, entitled, *The Canadian North-West, Its Early Development*, Vol. 2, p. 873.

Frequent references to gold and silver appear in the correspondence between the Colonial Secretary and the Company leading up to the surrender; for example :

(a) In a letter from H. H. Berens, representing the Company, to His Grace, the Duke of Newcastle, of the 1st of May, 1862, published in a return to an Address of the House of Lords, dated the 2nd of July, 1863, this appears :

"We are informed that exaggerated reports of the discovery of gold in the head waters of the Saskatchewan have been widely circulated both in the U.S. and Canada, and that an apprehension exists at Red River, that a very large number of people will flock into the country in consequence of these rumours."

(b) In a petition of the Archbishop of Rupert's Land and others of the 30th October, 1862, to Her Majesty, printed in the same return, this appears :

"But that, moreover, there are certain special considerations which your petitioners would desire . . . to press upon . . . the Home Government, arising out of the circumstances of the Red River having lately become a point of transit . . . from the United States to the gold fields of British Columbia, on the West side of the Rocky Mountains, of whom it may be mentioned upwards of 200 passed through the settlement this summer; and of the still more important fact that upon the undoubted authority of eye-witnesses of the highest respectability gold has recently been discovered on the East side of the Rocky Mountains in the valley of the Saskatchewan River and other localities."



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(c) In a letter from the Rt. Hon. Sir Edmund Head, representing the Company, to Sir Frederic Rogers, of the 11th November, 1863, printed in a return to an Address of the Honourable the House of Commons of the 5th of August, 1869, this appears :

"The most obvious, simple and satisfactory settlement of the question of transfer would of course be that the Crown should compensate the Company for their property by a sum of money paid either at once or in a series of annual payments; but to the supposed value of the soil would have to be added the price of the Company's interest of all mines of gold and silver which are by express words given in the charter. It is clear that the recent discovery of gold in the territory would cause the proprietary to reject any bargain which implied the gratuitous cession of those rights." 10

"The Crown shall resume the grant of mines and diggings of gold and silver throughout the colony on condition of paying to the Hudson's Bay Company one-third of the receipts of all dues, royalties, rents, etc., from such mines or diggings whether raised by way of export duty or otherwise; but the Company should not be liable for expenses of collection or escort." 20

(d) In a letter from the Rt. Hon. Sir Edmund Head to C. Fortescue, Esq., M.P., of the 13th April, 1864, published in the Appendix of the same Return, this appears :

"If, however, any limit in the amount of the payments to be made to the Company by this and the next article is absolutely required, the committee would be willing to agree that the produce of the two together; *i.e.*, of the 1s. an acre for land and the percentage on the gold, should not, in the aggregate, exceed £1,000,000."

(e) In a letter from the Rt. Hon. C. B. Adderley to Sir Curtis Sampson, Bart., of the 23rd of April, 1868, printed in the same Return, this appears : 30

"I am desired to call your attention to the negotiations which took place in 1864 between the Secretary of State and the Company, as recorded in the correspondence referred to in the margin, and I am to request that you will state what are the terms which the company would be prepared to accept, proceeding on the principles then adopted, namely, that the compensation should be derived from the future proceeds of the lands, and of any gold which may be discovered in Rupert's Land, coupled with reservations of defined portions of land to the Company." 40

(f) In a letter from Sir George E. Cartier, Bart., and William McDougall, Esq., C.B., to Sir Frederic Rogers, Bart., of the 16th of January, 1869, published in the same Return, this appears :

"We have omitted from the last term the one-fourth of the Government receipts from gold and silver, for two reasons :

first, it has not been shown that there are any gold or silver mines in the territory that will pay for working, second, all the attempts heretofore made to obtain a revenue from such sources in Canada have failed, and public opinion has forced the local Governments to adopt the policy of what may be called 'free mining' or cheap lands for miners and abolition of royalties and imposts except to meet the cost of preserving the peace, and of surveys and necessary supervision."

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10 Later, when the Parliament of Canada passed legislation affecting these lands in the Dominion Lands Act, 1872, Chapter 23, it expressly referred to the gold and silver: sections 36, 37, 38, 39 and 41 (Record, p. 134, l. 9).

These documents can be considered for the purpose of showing the surrounding circumstances and the history of the subject-matter, and to enable the Court to construe the document by such light.

Upon this Counsel cites:

*In re Branch Lines, Canadian Pacific Railway Co. v. James Bay Railway Co.*, 36 S.C.R. 42.

Mr. Justice Nesbitt at p. 89.

20 Mr. Justice Idington at p. 103.

This principle applies more especially in constitutional cases.

*St. Catharines Milling & Lumber Co. v. The Queen*, 13 S.C.R. 577.

Strong, J. at 606.

*In re Representation in the House of Commons*, 33 S.C.R. 475.

*Barrett v. City of Winnipeg*, 7 Man.R. 273.

Killam, J. at 295.

## ORDER-IN-COUNCIL, 1870, ADMITTING RUPERT'S LAND INTO CANADA.

This recites:

30 (1) The British North America Act, 1867.

(2) The first address of the 17th of December, 1867, from the Parliament of Canada praying for the union of Rupert's Land and North-Western Territory with Canada.

(3) The Rupert's Land Act, 1868.

(4) The second address of the 31st of May, 1869, from the Parliament of Canada to unite Rupert's Land on the terms and conditions in resolutions and the address, and also to unite the North-Western Territory.

(5) The submission to Canada of a draft surrender containing specified stipulations.

40 (6) The approval of such draft by the Governor-General and the inexpediency of including such stipulations in the surrender.

(7) The surrender of the 19th of November, 1869.

(8) The acceptance of the said surrender on the 22nd of June, 1870.

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It is then ordered and declared that from the 15th of July, 1870, the North-Western Territory shall be admitted into Canada upon the terms in the first address, and that Rupert's Land should also be admitted upon the terms and conditions remaining to be performed in the second address, and these it then sets forth. (Record, p. 102, l. 25.)

The first address represented :

"That in the event of your Majesty's Government agreeing to transfer to Canada the jurisdiction and control over the said region, the Government and Parliament of Canada will be ready to provide that the legal rights of any corporation, company or individual within the same shall be respected, and placed under the protection of Courts of competent jurisdiction." (Record, p. 84, l. 40.) 10

Some legal rights of the Company were the right to retain its posts and to reserve land adjoining them, and these Canada undertook to respect.

The admission of Rupert's Land was upon the terms and conditions in the Surrender, with the modification in clause 2 thereof already discussed.

The Order-in-Council as already shown has the force of a statute of the Parliament of the United Kingdom. It does not, however, in any way prejudice or detract from the Surrender. The terms in it have been approved by a later statute, The British North America Act, 1871, cap. 28, section 5. 20

#### THE MANITOBA ACT, 1870.

The Dominion Parliament, on 22nd of June, 1869, passed "An Act for the temporary government of Rupert's Land and the North-Western Territory when united with Canada," Chapter 3 of 32 and 33 Vict.

The Manitoba Act, Chapter 3 of 33 Victoria, assented to on the 12th of May, 1870, but to take effect upon the admission of Rupert's Land into Canada, in section 30 enacts as follows : 30

"All ungranted or waste lands in the Province shall be, from and after the date of the said transfer, vested in the Crown, and administered by the Government of Canada for the purposes of the Dominion, *subject to, and except and so far as the same may be affected by, the conditions and stipulations contained in the agreement for the surrender of Rupert's Land by the Hudson's Bay Company to Her Majesty.*" (Record, p. 119, l. 18.)

The language is "all ungranted or waste lands." The ungranted lands were those surrendered by the Company as distinguished from those sold by it to settlers as mentioned in clause 10 of the conditions of the transfer or retained by it. Nowhere in the Act is gold or silver mentioned. 40



There was a question as to the power of the Parliament of Canada to create the Province, and Imperial legislation was subsequently enacted, Chapter 28 of 34 and 35 Victoria, The British North America Act, 1871. Section 5 of it reads :

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“The following Acts passed by the said Parliament of Canada, and intituled respectively,—

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‘An Act for the temporary government of Rupert's Land and the North Western Territory when united with Canada;’  
and

10 ‘An Act to amend and continue the Act thirty-two and thirty-three Victoria, chapter three, and to establish and provide for the government of the Province of Manitoba,’

shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen's name, of the Governor-General of the said Dominion of Canada.”

The language of the Canadian Parliament so approved by the Parliament of the United Kingdom, is “*subject to, and except and so far as the same may be affected by the conditions*” in the Surrender. This is a further  
20 strong and authoritative recognition of the fact that these lands were excepted from the transfer by these conditions.

#### DOMINION LANDS ACT, 1872.

By agreement between the Dominion of Canada and the Company, the method of selecting its share of the land in the fertile belt was changed. This is set forth in the first Dominion Lands Act, cap. 23, 1872 (Record, p. 121 to p. 157). Instead of its share of each township which fell to the Company being determined by lot, certain specific sections or parts of sections should be known and designated as the lands of the Company, and become vested in it.

30 By Minute of 7th of January, 1873, the Company resolved that this Act and a supplementary order-in-council of December 1872, “be taken and substituted for the provisions contained in the Deed of Surrender of Rupert's Land in all matters relating to the Company's one-twentieth of the lands within the Fertile Belt.” (Record, p. 108, l. 15.)

The agreement and sections 17 to 21 do not in any way lessen the Company's rights or interest in its share of the Fertile Belt. The change was made “with a view to an equitable distribution throughout the territory described” and “to simplify the setting apart thereof.” The survey and notice in ordinary cases were under the statute to vest the  
40 title of these sections in fee simple in the Company without any patent.

The legislation in itself could not affect these lands, and for that reason the Company was asked to agree, and did agree, to substitute

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the Act and the Order-in-Council enabling it to reconvey to the Crown any lands "*in all matters relating to the Company's one-twentieth of the lands within the Fertile Belt.*"

It has already been argued that the Company owned the precious metals in such share of the land, and that argument applies to those selected by this new means also.

If there were any doubt that the Company's ownership of the gold and silver therein such is dissolved by the provisions of section 36. Land is not expressly interpreted in the Act as including these minerals, but there is no doubt of the intention of Parliament. The language of this section necessarily implies that these minerals vest in the patentee, and the rule of English law is abrogated so far as patents issued under this statute are concerned. 10

In cases of fractional or broken townships, or of the occupation of these specific sections by settlers, other lands were to be patented to the Company. The Company's title to such lands should be neither more nor less than its title to sections 8 and 26 when they became vested in it. Forms of patents adopted in such cases appear at pp. 112 and 114 of the Record.

It is submitted that the precious metals in these lands of the Company under this legislation were vested in the Company, upon the grounds that the Surrender and Order-in-Council had that effect, and that the Statute was substituted for it, and that the Statute and agreement have clearly that effect as a contract. 20

### CONSOLIDATION OF DOMINION LANDS ACT, 1879.

The Statute was consolidated and amended by cap. 31, 42 Vic. 1879 (Record, p. 159). The same heading "Lands Reserved by the Hudson's Bay Company" is used and the sections relating to these lands are 17 to 31 and old section 36 is 37. Section 129 reads as follows:

"Subject to the provisions hereinafter made, the Act passed in the thirty-fifth year of Her Majesty's Reign and intituled 'An Act respecting the Public Lands of the Dominion,' and the Act passed in the thirty-seventh year of Her Majesty's Reign, and intituled 'An Act to amend the Dominion Lands Act,' and the Act passed in the thirty-ninth year of Her Majesty's Reign and intituled 'An Act to amend the Dominion Lands Acts,' are hereby repealed, and this Act is substituted for them: Provided always, that all enactments repealed by any of the said Acts shall remain repealed, and that all things lawfully done and all rights acquired or liabilities incurred under them or any of them shall remain valid and may be enforced, and all proceedings and things lawfully commenced under them or any of them may be continued and 30 40

completed, under this Act, which shall not be construed as a new law, but as a consolidation and continuation of the said repealed Acts subject to the amendments hereby made and incorporated with them; and any thing heretofore done under any provision in any of the said repealed Acts which is repeated without alteration in this Act, may be alleged or referred to as having been done under the Act in which such provision was made, or under this Act."

Upon the words "reservation" and "reserved" see 3 *Stroud*, p. 1729.

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#### AMENDMENT OF DOMINION LANDS ACT, 1880.

10 By an amendment, cap. 26, 43 Vic., section 37, cited above, was, with several other sections, repealed, and a different provision was made for disposing of mineral lands. (Record, p. 165). The Company did not consent to this amendment (Record, p. 6, l. 11).

Cap. 1, 1867, an Act respecting the Statutes of Canada, reads as follows:

20 "3. This section and the fourth, fifth, sixth, seventh and eighth section of this Act, and each provision thereof, shall extend and apply to every Act passed in the Session held in this thirtieth year of Her Majesty's Reign, and in any future session of the Parliament of Canada, except in so far as the provision is inconsistent with the intent and object of such Act, or the interpretation which such provision would give to any word, expression or clause is inconsistent with the context,—and except in so far as any provision thereof is in any such Act declared not applicable thereto;—Nor shall the omission in any Act of a declaration that the 'Interpretation Act' shall apply thereto, be construed to prevent its so applying, although such express declaration may be inserted in some other Act or Acts of the same Session.

30 "7. Subject to the limitations aforesaid,—in every Act of the Parliament of Canada, to which this section applies:

"Thirty-sixthly. The repeal of an Act at any time shall not affect any act done or any right or right of action existing, accruing, accrued or established or any proceedings commenced in a civil cause, before the time when such repeal shall take effect; but the proceedings in such case shall be conformable when necessary to the repealing Act."

This was in force in 1880.

40 It is submitted that such repeal of section 37 did not under the chain of the Company's title, and in view of this provision of The Interpretation Act, affect its right to the precious metals in any of its lands.



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## CONSOLIDATION OF DOMINION LANDS ACT, 1883.

In 1883 the Act was further amended and consolidated by Chapter 17.  
The following is quoted from it :

“ Chap. 17.

“ An Act further to amend and to consolidate, as so amended,  
the several Acts respecting the Public Lands of the Dominion  
therein mentioned.

“ WHEREAS it is expedient, with a view to the proper and  
efficient administration and management of certain of the public  
lands of the Dominion, that the same should be regulated by  
statute, and divers Acts have been passed for that purpose which  
it is expedient further to amend and to consolidate as so amended :  
Therefore Her Majesty, by and with the advice and consent of the  
Senate and House of Commons of Canada, enacts as follows :

“ (1) This Act applies exclusively to the public lands included  
in Manitoba and the several Territories of the Dominion, which  
lands shall be styled and known as Dominion Lands; and this  
Act shall be known and may be cited as the ‘ Dominion Lands  
Act, 1883; ’ and the following terms and expressions therein shall  
be held to have the meaning hereinafter assigned them, unless  
such meaning be repugnant to the subject or inconsistent with  
the context; that is to say . . .

### DISPOSAL OF DOMINION LANDS.

#### LANDS RESERVED BY THE HUDSON’S BAY COMPANY.

“ 18. Whereas by article five of the terms and conditions  
in the deed of surrender from the Hudson’s Bay Company to  
the Crown, the said Company is entitled to one-twentieth of the  
lands surveyed into townships in a certain portion of the territory  
surrendered, described and designated as the ‘ Fertile Belt ’ ;

“ (2) And whereas by the terms of the said deed, the right  
to claim the said one-twentieth is extended over the period of  
fifty years, and it is provided that the lands comprising the same  
shall be determined by lot; and whereas the said Company and  
the Government of the Dominion have mutually agreed that with  
a view to an equitable distribution throughout the territory  
described, of the said one-twentieth of the lands, and in order  
further to simplify the setting apart thereof, certain sections or  
parts of sections, alike in numbers and position in each township  
throughout the said territory, shall, as the townships are surveyed,  
be set apart and designated to meet and cover such one-twentieth;

“ (3) And whereas it is found, by computation, that the said  
one-twentieth will be exactly met by allotting in every fifth

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township two whole sections of six hundred and forty acres each, and, in all other townships, one section and three-quarters of a section: therefore:

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“(4) In every fifth township in the said territory, that is to say: in those townships numbered 5, 10, 15, 20, 25, 30, 35, 40, 45, 50, and so on in regular succession northerly from the international boundary, the whole of sections numbers 8 and 26, and in each and every of the other townships, the whole of section number 8, and the south half and north-west quarter of section number 26 (except in the cases hereinafter provided for) shall be known and designated as the lands of the said Company:

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“(5) Provided, that the Company's one-twentieth of the lands in fractional townships shall be satisfied out of one, or other, or both, as the case may be, of the sections numbers eight and twenty-six as above, in such fractional townships,—the allotment thereof to be effected by the Minister of the Interior and the said Company, or some person duly authorized by them respectively:

“(6) Provided further, that on the survey of a township being effected, should the sections so allotted, or any of them, or any portion of them, be found to have been *bona fide* settled on under the authority of any Order in Council, or of this Act, then, if the Company forego their right to the sections settled upon as aforesaid, or any one or more of such sections, they shall have the right to select a quantity of land equal to that so settled on, and in lieu thereof, from any lands then unoccupied:

“(7) Provided also, as regards the sections and parts of sections as above mentioned, that where the same may be situate in any township withdrawn from settlement and sale, and held as timber lands under the provisions hereinafter contained, the same shall form no part of the timber limit or limits, included in such township, but shall be held to be the property of the Company:

“(8) Provided further, that one-twentieth of the revenue derived from timber limits which may be granted in unsurveyed territory within the fertile belt, as hereinafter provided, shall be annually, so long as the townships comprised in the same remain unsurveyed, paid and accounted for to the Company,—such one-twentieth to cease or to be diminished in proportion as the townships comprised in such limits or any of them, may be surveyed, in which event the Company shall receive their one-twentieth interest in the lands in such townships in sections eight and twenty-six as hereinbefore enacted: Provided, nevertheless, that on such sections being surveyed as aforesaid, should the same, or either of them, prove to have been denuded of timber by the lessee, to the extent of one-half or more, then, in such case the Company shall not be bound to accept such section or sections so denuded, and shall have the right to select a section

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or sections to an equal extent in lieu thereof from any unoccupied lands in such township.

“(9) As townships are surveyed, and the respective surveys thereof confirmed, or as townships or parts of townships are set apart and reserved from sale as timber lands, the Governor of the said Company shall be duly notified thereof by the Minister of the Interior, and thereupon this Act shall operate to pass the title in fee simple in the sections or three-quarter parts of sections to which the Company will be entitled under this clause, as aforesaid, and to vest the same in the said Company, without requiring a patent to issue for such lands; and as regards the lands set apart by allotment, and those selected to satisfy the one-twentieth in townships other than the above, as provided in sub-clauses five and six, returns thereof shall be made in due course by the Local Agent, or Agents, to the Dominion Lands Office, and patents shall issue for the same accordingly.” 10

#### MINING AND MINING LANDS.

“42. Lands containing coal or other minerals, whether in surveyed or unsurveyed territory, shall not be subject to the provisions of this Act respecting sale or homestead entry, but shall be disposed of in such manner and on such terms and conditions as may, from time to time, be fixed by the Governor in Council by regulations to be made in that behalf. 20

“43. It is hereby declared that no grant from the Crown, of lands in freehold or for any less estate, has operated or will operate as a conveyance of the gold or silver mines therein, unless the same are expressly conveyed in such grant.

“44. Any discoverer of minerals upon surveyed or unsurveyed lands, or his assigns and associates, who had applied for a grant of such lands before the passing of the Act forty-third Victoria, chapter twenty-six, shall be held to have the same rights as if that Act had not been passed. 30

#### REPEAL.

“126. Subject to the provisions hereinafter made, the Act passed in the forty-second year of Her Majesty's reign and intituled ‘An Act to amend and consolidate the several Acts respecting the Public Lands of the Dominions,’ and the Act passed in the forty-third year of Her Majesty's reign, and intituled ‘An Act to amend the Dominion Lands Act, 1879,’ and the Act passed in the forty-fourth year of Her Majesty's reign, and intituled ‘An Act to amend the Dominion Lands Acts,’ are hereby repealed, and this Act is substituted for them—the Acts repealed by the 40



Act first mentioned, and for which it was substituted, remaining so repealed: Provided always, that all enactments repealed by any of the said Acts shall remain repealed, and that all things lawfully done and all rights acquired and liabilities incurred under them or any of them shall remain valid and may be enforced, and all proceedings and things lawfully commenced under them or any of them may be continued and completed, under this Act, which shall not be construed as a new law, but as a consolidation and continuation of the Acts hereby repealed, subject to the amendments hereby made and incorporated with them; and any thing heretofore done under any provision in any of the said repealed Acts which is repeated without alteration in this Act, may be alleged or referred to as having been done under the Act in which such provision was made, or under this Act."

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By this time Parliament had not only repealed this section vesting the gold and silver in the patentee of any parcel of land, but it had declared that no grant from the Crown had operated as a conveyance of them unless expressly conveyed therein. It is submitted that this change of policy could not, and did not, affect the ownership of these minerals in the lands of the Company, and for the following reasons:

20

(a) The Company excepted and reserved these lands from those it surrendered.

(b) Such surrender was approved by the Order-in-Council of 1870, which had the force of a statute of the British Parliament.

(c) The transfer to Canada was made upon the terms and conditions in the Surrender, and Canada had no power to change them except and in so far as the Company could and did validly agree thereto.

(d) Such surrender was also approved by statute of the British Parliament: The British North America Act 1871, cap. 28, sec. 5.

30

(e) By special legislation and agreement with the Company, certain sections or parts of sections including therein the precious metals became vested in the Company. Subsequent general legislation did not in any way affect this or derogate from the Company's title.

(f) By section 1 "This Act applies exclusively to the public lands included in Manitoba and the several Territories of the Dominion." These lands had ceased to be public lands, and were in fact the Company's lands and known and designated as such.

40

(g) The Company did not receive any "grant from the Crown" within the meaning of section 43 for the land occupied as posts, for the land adjoining the posts, or for its one-twentieth share. It excepted, retained and reserved all those lands from its surrender and held them under it, and the relative legislation. The patents were merely confirmatory of the Company's title, or evidence of it. Certainly there never was any grant from the Crown as represented by Canada. The Surrender

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by the Company was to Her Majesty and the land excepted, retained and reserved therefrom remained vested in the Company. If any of it fell to the Company by way of regrant, it was not from the Crown in the right of Canada, as Canada had then no right or interest in the land, but direct from Her Majesty. Upon this Counsel cites *Calgary & Edmonton Ry. Co. v. The King*, L.R. 1904 A.C. 765. The Company's title does not depend upon any grant or conveyance under the Act, and legislation as to the effect, meaning or operation of such conveyances is immaterial.

(h) Section 126 expressly enacts that "all things lawfully done, and all rights acquired" under any of the earlier Acts remain valid, and may be enforced. 10

#### LANDS EXCHANGED.

As set out in clause 9 of the Record (p. 4, l. 13) the Company surrendered its right to these sections 8 and 26, and obtained other lands in lieu thereof, no reference being made to the precious metals. It is submitted that when the Company relinquished land including these minerals the land taken in exchange should also include them.

This also applies to land patented to the Company in lieu of land, including the precious metals, conveyed to the Crown. 20

#### PROVINCIAL ARGUMENTS.

The provinces of Manitoba, Saskatchewan and Alberta, have the right to file factums, and to appear on the hearing. It is submitted that this argument as to the Company rights to these minerals applies to any claims they may advance.

#### MANITOBA.

By the Manitoba Act, cap. 3, 1870, it was enacted by section 34:

"Nothing in this Act shall in any way prejudice or affect the rights or properties of the Hudson's Bay Company, as contained in the conditions under which that Company surrendered Rupert's Land to Her Majesty." 30

If the words of section 30 "all ungranted and waste lands" (Record p. 119, l. 18) should be held not to include the precious metals in such lands, they would in so far as the Company surrendered them, nevertheless be vested in Her Majesty under the Surrender, or in Canada under the Order-in-Council. There does not appear to be any transfer of them to the Province, and the creation of the Province under section 1 did not in itself vest such property in it.

As already urged, the land of the Company did not come within the phrase "ungranted or waste lands." That only meant lands of the Crown, and section 30 refers to the land excepted in the Surrender. 40

Manitoba, it is submitted, cannot claim the precious metals under sections 1 and 2 of The Manitoba Act, and section 109 of The British North America Act, as such minerals passed to the original Provinces

under that section, under the phrase "lands, mines, minerals and royalties." The Manitoba Act expressly retained in Canada the public lands, and the royalties incident thereto, treating the precious metals as such, would not pass to the Province without express language.

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By Cap. 6 of 1877, An Act respecting the Boundaries of the Province of Manitoba, the Province was enlarged. There is in that statute no express provision as to the rights or powers of the Province in or over the added territory, but they would certainly not be more than those in the original area, and might be much less.

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By Cap. 14 of 1881, an Act to provide for the extension of the Boundaries of the Province of Manitoba, they were further enlarged. Section 2 of that Act reads :

"The terms and conditions upon which such increase is made are as follows :

"(a) All the enactments and provisions of all the Acts of the Parliament of Canada which have, since the creation of the Province of Manitoba, been extended into and made to apply to the said Province, shall extend and apply to the territory by this Act added thereto, as fully and effectually as if the same had originally formed part of the Province and the boundaries thereof had, in the first instance, been fixed and defined as is done by this Act,—subject, however, to the provisions of section three of this Act."

By The Manitoba Boundaries Extension Act, cap. 32 of 1912, a further enlargement was made. Sections 5, 5 (2), 5 (3), 5 (8) and 6, are as follows :

"5. Inasmuch as under the provisions of this Act the province will not have the public land as a source of revenue, there shall, subject to the provisions hereinafter set out, be paid by the Government to the province, by half-yearly payments in advance, on the first days of January and July in each year, an annual sum based upon the population of the province, as from time to time ascertained by the quinquennial census thereof, as follows :

"The population of the province being assumed to be on the first day of July, nineteen hundred and eight, over four hundred thousand, the sum payable until such population reaches eight hundred thousand shall be five hundred and sixty-two thousand five hundred dollars :

"Thereafter until such population reaches one million two hundred thousand, the sum payable shall be seven hundred and fifty thousand dollars ;

"And thereafter the sum payable shall be one million one hundred and twenty-five thousand dollars.

"5 (2). Section 1 of Chapter 50 of the statutes of 1885 is repealed, and all lands (known as swamp lands) transferred to the province under the said section 1, and not sold by the province



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prior to the time at which the terms and conditions of this Act have been agreed to by the Legislature of the province, shall be re-transferred to the Government.

" 5 (3). The sums payable to the province under subsection 1 of this section shall be subject to a deduction at the rate of five per cent per annum upon the difference between the aggregate of the sums for which the said swamp lands were sold by the province and the aggregate of the sums from time to time charged to the province by the Government in connection with the selection, survey and transfer of such lands and of the sums expended by the province which may be fairly chargeable to the administration and sale of such swamp lands. 10

" 5 (8). As an additional allowance in lieu of public land there shall be paid by the Government to the province, one-half on the first day of July, nineteen hundred and twelve, and one-half on the first day of July, nineteen hundred and thirteen, to assist in providing for the construction of necessary public buildings, two hundred and one thousand seven hundred and twenty-three dollars and fifty-seven cents, a sum equal to the difference between the total payments made by the Government to each of the provinces of Saskatchewan and Alberta, under The Saskatchewan Act and The Alberta Act, respectively, for the like purposes and the sums already paid by the Government on account of the construction of the Legislative Buildings and the Government House at Winnipeg. 20

" 6. All Crown lands, mines and minerals and royalties incident thereto in the territory added to the province under the provisions of this Act, and the interest of the Crown under The Irrigation Act in the waters within such territory shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, subject to the provisions of any Act of the Parliament of Canada with respect to road allowances and roads or trails in force immediately before the coming into force of this Act." 30

Reference may also be made to the following Statutes :

(a) Cap. 5 of 1882. The recital sets forth "that fact that its *public lands* are administered and the *proceeds* appropriated by the Dominion Government."

(b) Cap. 50 of 1885, "An Act for the final settlement of the claims made by the Province of Manitoba on the Dominion." Section 5 refers to Manitoba's "want of public lands." 40

(c) Cap. 8 of 1886, An Act to explain the last Act.

(d) Cap. 38 of 1886 (Man.). By this Manitoba accepted the grants and payments under the above two Acts "as a full settlement of all claims by the said Province upon the Dominion as therein set forth."

## SASKATCHEWAN AND ALBERTA.

Extracts from the Statutes creating these provinces appear in the Record, p. 169 and p. 171. Counsel refers to sections 20, 21 and 23 of each Act.

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## QUESTIONS REFERRED.

Upon questions 1 to 6 the Company submits that the precious metals covered by these questions were at the respective times vested in the Company because it had received an express grant of them from the Crown, and did not by the surrender divest itself of them. While the Surrender conveyed to the Crown the "land granted" by the letters patent, it does not contain apt or appropriate words to convey the "mines royal as well discovered as not discovered, of gold, silver, gems and precious stones" granted by the letters patent.

The Company submits the following alternative reasons in support of its contention upon each question :

## AS TO QUESTION 1.

1. The Company surrendered the land granted to it only upon the conditions in the deed and by clause 2 of such conditions it "retained" these lands, including the precious metals therein, which were then vested in it.

2. The Company excepted these lands, including the precious metals, out of the lands surrendered.

## AS TO QUESTION 2(a).

1. The Company surrendered the land upon the conditions in the deed and under clauses 2, 3, 4 and 8 thereof these blocks of land with the precious metals did not pass from it. Upon their survey and selection the boundaries were determined.

2. The Company excepted these lands, including the precious metals, out of the lands surrendered. The Company's title was good immediately upon selection.

## AS TO QUESTION 2(b).

The patents confirmed in the Company its previous statutory and parliamentary title and were evidence of title. If it should be held that the precious metals were not vested in the Company prior to the issue of patents they would become vested in it thereupon under the terms of section 36 of the Dominion Lands Act, 1872.

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### AS TO QUESTION 3.

Under the surrender the Company excepted one-twentieth of the land in the fertile belt, and such included all the estate and interest and incidents belonging thereto then vested in the Company. The change effected by the agreement between Canada and the Company in 1872 did not affect the extent of the Company's interest in the land. There is no suggestion that the Company intended to release or did release anything it had under the Surrender in this respect.

Further, even if there were any doubt as to its rights to the gold and silver in these lands under the Surrender such doubt was dissolved by the contract between the Crown and the Company under which the Company had confirmed its title to them. On notification of the survey of each township these minerals therefore were vested in the Company, not in the Dominion. 10

### AS TO QUESTIONS 4(a) AND 4(b).

The Company's estate in these lands was not any different from that in those covered by notification. The patents, read and interpreted with the Dominion Lands Act of 1872, vest in the Company these precious metals.

### AS TO QUESTIONS 5 AND 6.

Had the Company not relinquished its rights in or conveyed these lands, the precious metals therein would vest in it. The accepting of other lands in lieu of them did not affect this ownership. 20

### AS TO QUESTION 7.

For the reasons already set forth, it is submitted that these repealing or amending Acts did not affect the ownership of the minerals in question.

All of the above is respectfully submitted.

DAVID H. LAIRD,  
*Of Counsel for Hudson's Bay Company.* 30

Winnipeg,  
January, 1927.

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## No. 10.

## Factum of Attorney General of Canada.

## IN THE SUPREME COURT OF CANADA.

IN THE MATTER OF A REFERENCE AS TO THE POWER OF THE PARLIAMENT OF CANADA AND OF THE GOVERNMENT OF CANADA WITH RESPECT TO PRECIOUS METALS IN, UNDER OR UPON CERTAIN LANDS OF THE HUDSON'S BAY COMPANY, AND AS TO THE OWNERSHIP OF SUCH PRECIOUS METALS.

In the  
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Court of  
Canada.

No. 10.

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General of  
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## STATEMENT OF CASE.

1. This is a reference under section 60 of the *Supreme Court Act* to determine the rights of the Hudson's Bay Company to the precious metals underlying certain lands in the Northwest Territories and in the provinces of Alberta, Saskatchewan and Manitoba, the reference excluding lands in other parts of Canada only in order to avoid raising certain questions which arise only when such other lands are considered. Separate questions are propounded as to the precious metals underlying :—

- (a) the lands on which stood, and which adjoined the Company's posts at the date of the surrender of its charter rights, and
- (b) the lands granted in part consideration of the surrender as representing one-twentieth of the lands in the Fertile Belt.

## STATEMENT OF FACTS.

2. The Hudson's Bay Company's Charter is dated on the 2nd of May, 1670. By it the Company was given authority to govern and administer and the exclusive right to trade in the lands described below. It was also granted the lands themselves to be held "as of Our Manor of East Greenwich in Our County of Kent in free and common soccage and not *in capite* or by the Knight's service; yielding and paying yearly to us, Our Heirs and Successors for the same, two Elks and two Black Beavers whensoever, and as often as we, Our Heirs and Successors, shall happen to enter into said Countries, Territories and Regions hereby granted."
3. The Company's rights of governance and ownership extended to all the Lands and Territories upon the Countries, Coasts and Confines of all those Seas, Streights, Bays, Rivers, Lakes, Creeks and Sounds, in whatsoever Latitude they shall be, that lie within the Entrance of the Streights commonly called Hudson Streights . . . that are not already actually possessed by or granted to any of our Subjects or possessed by the Subjects of any other Christian Prince or State, with the Fishing of all Sorts of Fish, Whales, Sturgeons, and all other Royal Fishes, in the Seas, Bays, Inlets and Rivers within the Premises, and the Fish taken therein, together with the Royalty of the Sea upon the Coasts within the Limits aforesaid, and all Mines Royal, as well discovered as

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\*p. 85.

“ not discovered, of Gold, Silver, Gems and precious Stones, to be found  
“ or discovered within the Territories, Limits and Places aforesaid, . . .  
“ the said Land . . . to be from henceforth warranted and reputed  
“ as one of our Plantations or Colonies in America called Rupert's Land.”

4. \*By the Rupert's Land Act, 1868 (31-32 V., c. 105, Imp.) provision was made for the surrender of the Company's rights under its charter and, upon the acceptance of such surrender and the submission of an address from the Houses of Parliament of Canada, for the inclusion in Canada of “ Rupert's Land,” defined as including “ the whole of the lands and territories held or claimed to be held ” by the Company, which claimed certain rights not only in the area draining into Hudson's Bay, but also in the area drained by rivers flowing into the Arctic Ocean as well as certain rights to lands in British Columbia. 10

5. The Company on the 19th November, 1869, executed a Deed of Surrender by which it surrendered to the Queen, on certain terms and conditions, “ all the rights of government and other rights, privileges, liberties, franchises, powers and authorities ” granted by its charter and also “ all similar rights which may have been exercised or assumed by the . . . Company in any part of British North America not forming part “ of Rupert's Land or of Canada or of British Columbia.” It also surrendered “ all the lands and territories within Rupert's land . . . granted or “ purported to be granted to the . . . Company ” by its Charter. 20

6. Among the conditions upon which the Surrender was made were the following, namely,—

(a) that the Company should “ retain all the posts or stations  
“ now actually possessed and occupied by them or their officers or  
“ agents whether in Rupert's Land or any other part of British  
“ North America ”; p. 95, l. 45.

(b) that the Company might “ within twelve months after the  
“ acceptance of the . . . surrender, select a block of land  
“ adjoining each of their posts and stations . . . in conformity ”  
with a list scheduled to the surrender and setting out the acreage to be included in each block, except the blocks adjoining the posts and stations in the Red River Territory, in which the size of the blocks was to be a matter of subsequent agreement; and p. 96, l. 1.

(c) that the Company might “ at any time within fifty years  
“ after the acceptance of the surrender, claim in any township or  
“ district within the (defined) fertile belt in which land is set out for  
“ settlements, grants of land not exceeding one-twentieth part of the  
“ land so set out; the blocks so granted to be determined by lot and  
“ the Company to pay a rateable share of the survey expenses,” and  
the Company to be entitled to defer the exercise of this right for not more than ten years after the setting out of the lands. 40

7. The necessary address having been passed by the Senate and the House of Commons of Canada on 31st May, 1869, the Surrender was pp. 102-106.  
pp. 84-85.  
pp. 87-93.

accepted by Order in Council dated the 23rd of June, 1870, and Rupert's Land and the Northwestern Territory were thereby united to Canada.

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8. \*Pursuant to section 146 of the *British North America Act*, the Parliament of Canada passed the *Manitoba Act, 1870* (33 V., c. 3) constituting the Province of Manitoba, and applying thereto the provisions of the *British North America Act* in so far as its provisions were not specially varied. The *Manitoba Act* provided, among other things, for the setting aside of lands for Indians, for the issue of Crown grants in confirmation of grants theretofore made by the Hudson Bay Company, for the making  
10 of grants converting titles by occupancy into freehold estates, and for giving a right of pre-emption to persons in peaceable possession of lands in those parts of Manitoba in which the Indian title had not yet been extinguished. It directed that "all ungranted or waste lands in the province shall be. . . . vested in the Crown and administered by  
" the Government of Canada for the purpose of the Dominion," subject  
to the terms of the Surrender, express provision being made that nothing it contained should "in any way prejudice or affect the rights or properties  
" of the Hudson's Bay Company." Provision was also made for the administration of that part of Rupert's Land and the Northwestern Territory  
20 not included in the new province.

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*continued.*  
\*p. 117.  
†p. 119.

p. 119, l. 18.

p. 119, l. 21.

9. No steps appear to have been taken to carry out the terms of the deed of surrender with respect to lands, or to grant any lands to the Company, until after the passage of the first *Dominion Lands Act* (35 V.,  
c. 23), which was assented to on the 14th of April, 1872. That statute lays down the system to be followed in the survey of the lands in Manitoba and the North West Territories and provides for the administration of such land. It recites the conditions in the Deed of Surrender and further recites (s. 17) that

p. 121.

30 "the said Company and the Government of the Dominion have mutually agreed that, with a view to an equitable distribution throughout the territory described of the said one-twentieth of the lands, certain sections or parts of sections, alike in numbers and position in each township throughout the said territory, shall, as the townships are surveyed, be set apart and designated to meet and cover such one-twentieth."

p. 126, l. 14.

10. The Act accordingly provided for allotting to the Company in satisfaction of its one-twentieth, section 8 and the south half and north-west quarter of section 26 in each township in the fertile belt, except those in each range numbered 5 or any multiple of 5; in these townships  
40 the whole of both sections 8 and 26 were so allotted (s. 17). Provision was also made for the special cases of fractional townships and townships broken by lakes (s. 18) and townships held as timber lands (s. 20), and for the substitution of other lands in case the specified sections in any township were found to have been *bona fide* settled upon (s. 19). As to all lands but these, it was provided that notification by the Surveyor  
General of Canada to the Company of the completion of the survey should

p. 126, l. 28.

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p. 127, l. 14.



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*continued.*  
\*pp. 127–  
144.

operate to give the Company “title in fee simple” to every section 8 and to the whole or part, as the case might be, of every section 26. Patents, however, were to issue to the Company for any additional or substituted lands and lands in fractional townships.

11. \*The *Dominion Lands Act* proceeded to provide for school lands, for military bounty lands, for the purchase and sale of unappropriated land at \$1.00 an acre or by public auction, for town plots, homesteads, grazing lands, hay lands, Indian lands, timber lands and slides and for mining lands, the first section on the last mentioned subject being in the following terms (s. 36);

“No reservation of gold, silver, iron, copper or other mines or minerals shall be inserted in any patent from the Crown granting any portion of the Dominion lands.”

Provision was made for the staking of mineral claims and the substitution “in any case of certain lands proving to be rich in minerals” of a system of leasing in lieu of sale, and alternatively for the reservation of alternative sections in territory supposed to contain minerals. Subject to these special cases, however, it was directed (s. 40) that

“No distinction in price shall be made between lands supposed to contain mines or minerals and farming lands, but both classes shall be sold at the uniform price of \$1.00 per acre.”

12. The Act did not provide for the surrender or reconveyance to the Crown of any lands which the Company did not desire to retain, and at the Company’s request an Order in Council was approved by the Governor General on the 6th of December, 1872, agreeing that the Company might at any time within twelve months after the title to any lands became vested in it, make a reconveyance without any equivalent. This Order in Council was considered at a meeting of the Company held on January 7th, 1873, and it was resolved that:—

“The Dominion Lands Act and this Order in Council be taken and substituted for the provisions contained in the deed of surrender of Rupert’s Land in all matters relating to the Company’s one-twentieth of the lands within the Fertile Belt.”

13. By a statute of 1874 (37 V., c. 19) amending the *Dominion Lands Act*, two alterations, of which one at least was in the Company’s favour but of which neither is presently material, were made in the arrangement with the Company as set out in the Act of 1872. These new provisions were carried into the first consolidation of the Act made in 1879 (42 V., c. 31), which also included (as ss. 37–42) the same provisions as before in respect of the reservations which were not to be included in patents, the obtaining of minerals and the sale or lease of mineral lands.

14. In 1880 (43 V., c. 26) these provisions relating to mineral lands were repealed, and lands containing coal and minerals were withdrawn from sale or homestead and were directed to be disposed of pursuant to regulation. This provision was included in the consolidation of the *Dominion Lands Act*

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made in 1883 (46 V., c. 17) and this consolidation included a new provision (s. 43) in the following terms :—

“ It is hereby declared that no grant has operated or will operate as a conveyance of the gold or silver mines therein unless the same are expressly conveyed in such grant.”

15. \*Certain verbal changes were made in the consolidation of 1886 (R.S.C., 1886, c. 54), but in substance the statute remained as before both with regard to the Hudson's Bay lands and mineral lands, and the same provisions were again carried forward into the Revised Statutes of 1906 (c. 55) with a statutory direction, first adopted in 1892 (55-56 V., c. 15, s. 6) that no disposition should be made of mines or mining interests for more than three terms of twenty years each. No changes of substance were made in the later consolidation of the *Dominion Lands Act* of 1908 (7-8 Ed. VII., c. 20) although there was dropped from it, no doubt as unnecessary, the declaration (verbally different from but substantially equivalent to that introduced in 1883), that no grant from the Crown should be deemed “ to have conveyed or to convey the gold and silver mines in the lands described.”

16. The earliest patent the case contains is dated on the 27th of January, 1882. This patent covers an area described as “ a block of land surveyed and set out adjoining the post or station of the Company known as Fairford Mission,” and other patents for similar blocks were in a like form and each included the land actually possessed and occupied by the Company as the post or station in question at the time of the Surrender. Two other patents are included in the case, one dated the 7th of July, 1910, and the other the 10th of May, 1913, and are respectively typical of the patents issued covering lands in the fertile belt in fractional townships and of the patents of lands granted in lieu of lands included in sections 8 and 26 reconveyed to the Crown by reason of their having been found to be settled upon. All these patents contain reservations in respect of navigable waters and for roads (the latter in accordance with the conditions of the Surrender), but none of them makes any reference to minerals, either royal or base.

17. The only notification of survey attached to the case is dated on the 30th of June, 1881, and is typical of other similar notifications which took effect as conveyances of the whole or proper parts of sections 8 and 26 in accordance with section 21 of the *Dominion Lands Act* of 1872 and the corresponding provisions in subsequent Acts.

18. In 1906 the Provinces of Alberta and Saskatchewan were constituted out of portions of the Northwest Territories by the Alberta and Saskatchewan Acts, 4-5 Edward VII., cc. 3 and 42. By s. 21 of each of these statutes it was provided that “ all Crown lands mines and minerals and royalties incident thereto . . . shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada.” It was also provided (s. 23) that nothing in the Act should “ in any way prejudice or affect the rights or properties of the Hudson Bay Company as contained in the conditions under which that company surrendered Rupert's Land to the Crown.”

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\*pp. 167-  
169.

†pp. 173-  
175.

p. 176.

p. 110.

p. 3, ll. 22-  
28.

pp. 112-114.

p. 3, l. 44 to  
p. 4, l. 12.

p. 108.

p. 3, l. 42 to  
p. 4, l. 12.

pp. 169-171.

pp. 170-173.

pp. 171-173.

## ARGUMENT.

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19. Having regard to the amended terms of reference, no question arises as to the respective interests of the Crown in the right of Canada and the Crown in the right of the respective provinces; the only question is as to whether the Hudson's Bay Company or the Crown is entitled to the "precious metals, gold and silver" in and under the lands of the different categories described.

20. The following are accordingly the submissions made on behalf of the Crown and in opposition to the claims of the Company:—

(a) The present rights of the Company are no longer governed 10  
by the terms of its charter. Its charter rights were wholly  
surrendered, subject to the carrying out of certain conditions  
expressed in the Deed of Surrender, and it is the terms of that Deed  
and the subsequent variations of its provisions which alone are  
relevant to the points now submitted for decision.

(b) The only rights in land which, under the Deed of Surrender,  
the Company was "to retain" were rights in the lands upon which  
stood their occupied posts and stations. The reason for the  
retention of these lands was their occupation for the purpose of 20  
posts and stations, not the existence in or under them of mines  
either of precious or base metals. There is consequently no reason  
for reading this condition as implying an intention on the part of  
the Company that it should retain any regal or prerogative rights,  
or any obligation on the Crown to convey such rights by reason  
of its acceptance of the surrender.

(c) This interpretation is confirmed by the fact that the Deed  
of Surrender makes no distinction between the rights of the Company  
in lands it is to retain in virtue of posts and stations in Rupert's  
Land (the name given by the Company's Charter to the territories  
therein described) and in virtue of posts and stations outside Rupert's 30  
Land in the area in which the Company had "exercised or assumed"  
rights similar to those granted it in respect of Rupert's land itself.  
The Schedule to the Charter (pp. 101-102) refers to a number of posts  
as being in the "Northwest Territory"; it carefully distinguishes  
between these and the posts in Rupert's Land, so far as concerns  
location, but suggests no distinction between the rights of the  
Company in respect of the lands occupied by, or adjoining, posts  
of each class. There is no possible basis for a claim by the Company  
to any rights in the gold and silver underlying lands to which it  
had acquired no rights by virtue of its charter. 40

(d) The lands upon which the occupied posts and stations  
stood were, moreover, obviously regarded and treated as standing  
in identically the same position as the "adjoining" blocks which  
the Company was to select. The several patents for these blocks  
which the Company accepted each included the area on which the



post or station actually stood, and the actual boundaries of the occupied lands do not appear ever to have been ascertained or defined.

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(e) There can again be no distinction drawn between the character of the rights acquired by the Company in the blocks adjoining posts and stations and in those granted as representing one-twentieth of the "land . . . set out for settlements." In the case of the first, the Company was to have the right "to select," the block, and in the case of the second, it was to have the right "to claim . . . grants of land not exceeding one-twentieth," etc. Obviously the Deed of Surrender is to be read as anticipating that upon the "selection" or "claim" being made, the Government of Canada should convey the land in the same way as it would be conveyed to any other grantee from the Crown.

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*continued.*

(f) Moreover, if (as the Company had a right to do) it delayed its selection of its one-twentieth in any township or district until some time after that township or district had been laid off for settlements, it could only receive its allotment therein out of lands remaining "unsold" when the selection was made. This indicates that the Company's title was not intended to be different from that which a settler or buyer would receive; the Company was given no option to select residual rights remaining in the Crown after a sale.

(g) The rights of the Company as to the precious metals by virtue of the Deed of Surrender were not enlarged by the *Dominion Lands Act* of 1872 and the Canadian Order in Council dated on the 6th of December in that year, which Act and Order the Company expressly agreed should "be taken and substituted for" the provisions contained in the Deed of Surrender . . . in "all matters relating to the Company's one-twentieth of the lands" within the Fertile Belt."

(h) The title of the specified sections 8 and 26, or parts of the latter, which, under section 21 of the *Dominion Lands Act*, are to vest in the company on the Surveyor General's notification, is expressly stated to be a "title in fee simple," an expression which would *prima facie* exclude any prerogative rights to the precious metals. Moreover, the provision in question is obviously made merely to save the preparation of unnecessary documents; there is nothing to suggest that the title thereby passing was to be in any particular different from that the Company received by virtue of the patents to be specially issued covering lands in fractional townships, in townships broken by lakes, and in townships in which, on survey, sections 8 and 26 were found to be occupied (ss. 18-20).

(i) The *Dominion Lands Act* does not affect the lands occupied as, and adjoining, posts or stations, but can affect only the Company's one-twentieth of the fertile belt. In respect to this one-twentieth, its provisions may admittedly be referred to, but

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apart from the sections directly relating to the agreement with the Company, the only relevant provisions the Act contains appear to be those directing that in respect of price no distinction should be made between "lands supposed to contain mines or minerals" and "farm lands," that "both classes should be sold at a uniform price of one dollar per acre" (s. 40), and that no "patent from the Crown granting any portion of the Dominion lands" should contain any "reservation of gold, silver, iron, copper, or other mines and minerals" (s. 37).

(j) There being in these statutory provisions no express 10  
reference to the prerogative rights of the Crown, such rights cannot be held to have been affected by terms capable of interpretation as not affecting them. The terms used are so capable: they are entirely consistent with the application of the common law rule that a grant of land from the Crown carries the base metals, without their being specially referred to, but excludes the precious metals unless expressly granted.

(k) Even if the provisions of the *Dominion Lands Act* of 1872 were to be construed as varying the common law rule so as to permit the precious metals to pass from the Crown to a subject 20  
without express grant, their repeal in 1880 had the effect of restoring that rule, and even if it was not restored then, it was so expressly in 1883 by the introduction into the Act of a specific declaration, retrospective as well as prospective, to that effect. The issue by the Crown and the acceptance by the Company between 1880 (or at latest 1883) and at the earliest 1908, of grants from the Crown containing no express reference to gold and silver is very strong evidence that neither the Deed of Surrender nor the subsequent agreement (including the provisions of the *Dominion Lands Act* of 1872) was interpreted by the Crown or by the Company 30  
as having conferred upon the latter any right to receive the precious metals.

(l) The omission from the *Dominion Lands Act* in and after 1908, of the declaration that gold and silver mines should not pass without express conveyance, is not to be interpreted as having had the effect of altering the common law rule which that provision expressed: *Kennedy v. Inman*, 1920, 1 W.W.R. 533, 15 A.L.R. 196.

21. On behalf of the Dominion of Canada, it is therefore submitted that all the questions submitted should be answered by affirming that all the Crown's prerogative rights in the precious metals, gold and silver 40  
under the lands described have continued since 1870 to be vested in it.

AIMÉ GEOFFRION,

O. M. BIGGAR,

*Of Counsel for the Attorney General of Canada.*

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## No. 11.

## Factum of Attorney General of Manitoba.

## IN THE SUPREME COURT OF CANADA.

*In the  
Supreme  
Court of  
Canada.*

IN THE MATTER OF A REFERENCE AS TO THE POWER OF THE PARLIAMENT OF CANADA AND OF THE GOVERNMENT OF CANADA WITH RESPECT TO PRECIOUS METALS IN, UNDER OR UPON CERTAIN LANDS OF THE HUDSON'S BAY COMPANY, AND AS TO THE OWNERSHIP OF SUCH PRECIOUS METALS.

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Attorney  
General of  
Manitoba.

## PART I.

10 By an Order-in-Council of the Privy Council of the Dominion of Canada, (dated 26th January, 1926) as amended by Order-in-Council (dated the 12th October, 1926) certain questions were referred to the Supreme Court of Canada under Section 60 of the Supreme Court Act, in regard to the right of ownership in the Precious Metals, (gold and silver) in, under and upon certain lands of the Hudson's Bay Company.

The Questions were submitted upon a statement of facts agreed upon between the Minister of Justice of Canada on behalf of the Dominion of Canada and the Hudson's Bay Company.

The following Documents in the Record are therein referred to :

20 1. Order of Reference by the Governor in Council (26th January, 1926).

(Record, page 1).

2. Order-in-Council amending reference (12th October, 1926).

(Record, page 9).

3. Statement of facts submitted.

(Record, pages 2 to 6).

4. Questions submitted.

(Record, page 10, and page 4,) with amendment printed in red ink on the page opposite to page 4.

30 5. The Order of the Supreme Court of Canada for inscription of the Reference and Directions as to parties.

(Record, page 6).

6. The Notice of Hearing.

(Record, page 7).

## PART II.

The terms of the reference were settled and agreed upon between the Government of Canada and the Governor and Company of Adventurers of England trading into Hudson's Bay, hereinafter referred to as "The Hudson's Bay Company", as stated in the Order-in-Council dated 26th

40 January, 1926.

(Record, page 1).

and in the Amending Order-in-Council, dated 12th October, 1926

(Record, pages 9, 10).



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General of  
Manitoba—  
*continued.*

The Province of Manitoba was not a party to the reference, but is merely a party interested, and directed to be notified by the said Order of this Court, dated the 6th March, 1926, which at the same time directed that the Attorney-General of the said Province of Manitoba and other added parties should be at liberty to file a factum and to appear by Counsel upon the said reference.

The Order-in-Council of the 12th October, 1926, recites that the said amending Order was prepared by the Minister of Justice after having consulted with and obtained the approval of the Solicitors for the Hudson's Bay Company, (Record, page 9, lines 28-29,) and the said order by paragraph 2 of the amending Order declared :

" that it is not intended by the said reference to raise any issues  
" as between the Dominion and any Province, and that so far  
" as any lands in the Province of Manitoba are concerned Questions  
" numbers 1, 2, & 3 may be answered as if the words ' represented  
" by the Dominion of Canada ' where they occur after the word  
" ' Crown ' in each of said questions were struck out, and that  
" in answering any of the questions referred it will be sufficient  
" to state what are the rights of the Crown and the company,  
" respectively, without indicating whether any of the rights of  
" the Crown are vested in the Dominion or the Province."

The general question submitted for the opinion of this Court is, whether under the documents and legislation referred to, the right to the precious metals (gold and silver) at the different times and under the different circumstances, in the said order mentioned, were vested in the Crown or in the Company.

The Attorney General of the Province of Manitoba respectfully submits that in all the cases enumerated in the said order, the said Precious Metals were vested in Her late Majesty, Queen Victoria, and are now vested in His Majesty, and were never vested in the Company.

Immediately after the acceptance of the surrender and the passing of the Order-in-Council of the 23rd June, 1870, and the acceptance by Her late Majesty, Queen Victoria, of such surrender, all Rights of Government and Proprietary Rights and all other privileges, liberties, franchises, Powers and Authorities, created by Letters Patent to the said Company within Rupert's Land were absolutely extinguished.

The Rupert's Land Act, 1868, sections 3 and 4.

(Record, page 86, line 15 to line 42.)

As conditioned by the amended Reference, no opinion of this Honourable Court is desired as between the rights of the Crown as representing the Dominion and the rights of the Crown as representing the Province of Manitoba. The position of the Province of Manitoba is the same as that of the Dominion, and the said Province joins with the Dominion in its contention that the Crown is entitled to all the said Precious Metals in all of the Lands in question.

## PART III.

The following cases are referred to :

*The Attorney-General of British Columbia versus The Attorney-General of Canada.* (14 Appeal Cases 295).

Held that a conveyance by the Province of British Columbia of public lands did not effect a transfer of its interest in revenues arising from the prerogative rights of the Crown.

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Manitoba—  
*continued.*

10 “The Precious Metals in, upon and under such lands are not incidents  
“ of the land but belong to the Crown, and under Section 109 of the  
“ British North America Act, beneficially to the Province, and an intention  
“ to transfer them must be expressed or necessarily implied.  
(14 App. Case 295.)

20 “The expression ‘lands’ in Section 109 admittedly carries with it  
“ the baser metals, that is to say, ‘mines’ and ‘minerals’ in the sense  
“ of Section 109. Mines and minerals in that sense are incidents of land,  
“ and as such have been invariably granted to settlers who purchased  
“ land in British Columbia. But *jura regalia* are not accessories of land,  
“ and their Lordships are of opinion that the rights to which the Dominion  
“ Government became entitled under the 11th Article, did not, to any  
“ extent derogate from the Provincial right to ‘royalties’ connected with  
“ mines and minerals under Section 109 of The British North America  
“ Act.”

(14 App. Case 305.)

*The Burrard Power Company v. The King* (1911) App. Cas. 87.

*King v. Rithet.* (1924) App. Case 213.

*Woolley v. Attorney-General of Victoria*, 2 App. Case 163.

ON BEHALF OF THE ATTORNEY-GENERAL OF MANITOBA.

F. H. CHRYSLER,

*Counsel.*

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## No. 12.

**Factum of Attorney General of Saskatchewan.**

**IN THE SUPREME COURT OF CANADA.**

IN THE MATTER OF A REFERENCE AS TO THE POWER OF THE PARLIAMENT  
OF CANADA AND OF THE GOVERNMENT OF CANADA WITH RESPECT  
TO PRECIOUS METALS IN, UNDER OR UPON CERTAIN LANDS OF THE  
HUDSON'S BAY COMPANY, AND AS TO THE OWNERSHIP OF SUCH  
PRECIOUS METALS.

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wan.

40 The Province of Saskatchewan was not consulted and is no party  
to settling the reference. It is understood that the intention in the  
reference as amended was to make it quite clear that no question is

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raised and no question is to be decided as to the respective interests of the Crown in the right of Canada and the Crown in the right of the Provinces. If the reference called for any decision as between the rights of the Crown in the right of the Dominion and the Crown in the right of the Province of Saskatchewan, this Province would wish to file a separate factum and present fully to the Court claims which might be opposed to those of the Dominion. Assuming that the amended reference avoids any such question, then the position of this Province is the same as that of the Dominion, and the Province of Saskatchewan without submitting any factum which would be duplication of that submitted by the Dominion will support the position taken by the Dominion. 10

A. L. GEDDES,

HAROLD FISHER,

*Of Counsel for the Attorney  
General of Saskatchewan.*

January 14th, 1927.

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**Certificate of Judgment.**

**IN THE SUPREME COURT OF CANADA.**

Wednesday the 20th day of April A.D. 1927.

20

Present :

The Right Honourable Mr. Justice ANGLIN, P.C., Chief Justice.

The Right Honourable Mr Justice DUFF, P.C.

The Right Honourable Mr Justice MIGNAULT.

The Honourable Mr. Justice RINFRET.

The Honourable Mr. Justice MACLEAN *ad hoc*.

IN THE MATTER OF A REFERENCE AS TO THE POWER OF THE PARLIAMENT OF CANADA WITH RESPECT TO PRECIOUS METALS, IN, UNDER OR UPON CERTAIN LANDS OF THE HUDSON'S BAY COMPANY, AND AS TO THE OWNERSHIP OF SUCH PRECIOUS METALS. 30

This is to certify that whereas by Orders in Council of His Majesty's Privy Council for Canada, bearing date the 26th day of January in the year of our Lord 1926 (P.C. 108), and 12th day of October in the year of our Lord 1926 (P.C. 1561), the several questions hereinafter set out were referred to the Supreme Court of Canada for hearing and consideration, pursuant to section 60 of the Supreme Court Act (copies of which Orders in Council and of the proceedings subsequently taken in the said Reference are contained in the printed Case annexed hereto marked "A" and signed by me);

And Whereas the said questions came before this Court for hearing 40 on the 1st and 2nd days of February in the year of our Lord 1927, in



the presence of counsel for the Attorney-General of Canada, the Attorneys-General of the Provinces of Manitoba, Alberta and Saskatchewan, and the Hudson's Bay Company;

WHEREUPON, and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said Reference should stand over for consideration, and the same having come on this day for determination, the following opinion was pronounced by the Right Honourable the Chief Justice Anglin, on behalf of the Court.

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10 "We are of the opinion that the series of questions referred to the Court by His Excellency the Governor-General in Council should be answered as follows :

*Question No. 1.*—In whom, after the acceptance of the said surrender and the passing of the said Order in Council of the 23rd day of June in the year of our Lord 1870, were vested the precious metals, gold and silver, in, under or upon the lands in the said area possessed and occupied at the date of the said surrender as posts or stations by the Company, whether in the Crown represented by the Dominion of Canada, or in the Company :

*Answer :* In the Crown.

20 *Question No. 2.*—In whom were vested the precious metals, gold and silver in, under or upon the blocks of land adjoining the said posts or stations of the Company and selected by the Company, whether in the Crown represented by the Dominion of Canada, or in the Company :

(a) Upon the selection by the Company of the said blocks of land ;

(b) Upon the issue to the Company of the Crown patents for the said blocks of land ?

*Answer :* (a) In the Crown ;

(b) In the Crown.

30 *Question No. 3.*—In whom were vested the precious metals, gold and silver in, under or upon the sections of land or parts thereof in the said fertile belt which were vested in the Company by notification upon such notification, whether in the Crown represented by the Dominion of Canada, or in the Company ?

*Answer :* In the Crown.

*Question No. 4.*—In whom were vested the precious metals, gold and silver, in, under or upon the land granted to the Company by letters patent from the Crown upon the issue thereof :

40 (a) In satisfaction of the Company's one-twentieth of the land in the fractional townships, or in the townships broken by lakes ;

(b) In lieu of lands allotted to the Company found to be settled upon ?

*Answer :* (a) In the Crown.

(b) In the Crown.

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*Question No. 5.*—In whom were vested the precious metals, gold and silver, in, under or upon the lands granted to the Company by letters patent in lieu of lands in which the Company relinquished and surrendered its rights to the Crown upon the issue of such patents?

*Answer :* In the Crown.

*Question No. 6.*—In whom were vested the precious metals, gold and silver, in, under or upon the land granted to the Company by letters patent in lieu of the land conveyed by the Company to the Crown upon the issue of such patents?

*Answer :* In the Crown.

*Question No. 7.*—If in any of such cases the precious metals, gold and silver, were vested in the Company, did the repeal of section 37 of the Dominion Lands Act, 1879, Chapter 31 of 42 Victoria, by section 6 of chapter 26 of 43 Victoria, or the enactment of section 43 of chapter 17 of 46 Victoria, or of the Dominion Lands Act, Chapter 20 of 7 and 8 Edward VII., or any other enactment affect the ownership of the said precious metals in such case?

*Answer :* The hypothesis of this question does not arise.

The reasons for the opinion of the Court are hereto annexed, marked " B " and signed by me

All of which is certified by me under the official seal of the Supreme Court of Canada.

(Signed) E. R. CAMERON,  
*Registrar.*

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IN THE MATTER OF A REFERENCE AS TO THE POWER OF THE PARLIAMENT OF CANADA AND OF THE GOVERNMENT OF CANADA WITH RESPECT TO PRECIOUS METALS IN, UNDER OR UPON CERTAIN LANDS OF THE HUDSON'S BAY COMPANY, AND AS TO THE OWNERSHIP OF SUCH PRECIOUS METALS.

The judgment of the Court (the Chief Justice, and Duff, Mignault, Rinfret and Maclean (ad hoc) JJ.) was delivered by

THE CHIEF JUSTICE :

Under the authority of section 60 of the Supreme Court Act His Excellency the Governor-General in Council has referred to the Court for hearing, consideration and answer a series of questions relating to the ownership of the precious metals in lands formerly " held or claimed to be held " by the " Governor and Company of Adventurers of England trading into the Hudson's Bay " (31-2 Vic., (Imp.), c. 105, s. 2), and now included in the Provinces of Manitoba, Saskatchewan and Alberta and the North West Territories of Canada.

That the Hudson's Bay Company, prior to the 23rd of June, 1870, owned the precious metals in the territories granted to it in 1670 by

Charter from King Charles II. is indisputable. That Royal Charter vested in the Company not only all the lands and territories comprised in Rupert's Land as therein described, not already actually possessed by or granted to any of the King's subjects or possessed by the subjects of any other Christian Prince or State, but also in express terms

all Mines Royal, as well discovered as not discovered, of Gold, Silver, Gems, and precious Stones to be found or discovered within the Territories, Limits and Places aforesaid.

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10 It was decided in 1568 in *The Mines Case* (1 Plowd. 310) that, although all mines of gold and silver within the realm, while held by the Crown, are not to be regarded as *partes soli* or as incidents of the land in which they are found, and are not held (as are the lands of the Crown and the baser metals contained in them) by proprietary title, whether they be in the lands of the Queen or of subjects (p. 336), they may, nevertheless,

by grant of the King be severed from the Crown and be granted to another, for it is not an incident inseparable to the Crown but may be severed from it by appropriate and precise words. (p. 336A).

20 The law of England in these particulars, as thus defined in *The Mines Case*, persists to the present day (*Woolley v. Attorney General for Victoria*, (1877), 2 A.C., 163; *Attorney General for British Columbia v. Attorney General for Canada*, (1889), 14 A.C., 295, 302); and it is common ground that according to that law the questions now before us must be answered. This title, therefore, of the Governor and Company under the Royal Charter of 1670 to the precious metals in Rupert's Land was beyond cavil. They were "absolute lords and proprietors of the territory", saving the allegiance due to His Majesty.

30 Indeed this was common ground between counsel; and this aspect of the matter is now dwelt on only to give prominence to the fact that the source of the Company's title alike to the precious metals and to the lands in which they lie was the grant from the Crown. Both were granted to the Company by the same Royal Charter.

Consequent upon such grant, as is stated in the factum of the Company (p. 15, l. 36), the precious metals in the land transferred to it "became part of the land the same as other metals," because (p. 18, l. 15),

while the precious metals and the lands are vested in the one owner other than the Crown, such metals are part of the land and pass from such owner by a grant in absolute terms of the fee simple estate in the land;

and again (p. 18, l. 37),

40 The ownership of precious metals by the owner of the land in which they are found is not a right, privilege, liberty, franchise, power or authority. In such a case it is part of his estate in the land. Even if it were a right while held by the Crown, or a person other than the owner of the land, once it is vested in the owner of the land it merges in the land and becomes extinguished,



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In this view the counsel for the Crown are also fully agreed; and, as will presently appear, it meets the chief difficulty suggested by counsel for the Company in regard to the scope and effect of the deed of surrender to the Crown in 1870, apart from those which it is argued arise upon the terms and conditions contained in it and subject to which it was given.

Prior to Confederation the Hudson's Bay Company appears to have been quite ready, if not anxious, to part with its proprietary rights and franchises to the English Crown for a consideration. Indeed negotiations were being carried on, as appears from correspondence set out in the Company's factum, to achieve that purpose. In the Canadian Confederation scheme as formulated in the British North America Act of 1867 provision was made (s. 146) for the admission into the Union, on address from the Houses of Parliament of Canada, of

10

Rupert's Land and the North Western Territory, or either of them . . . . . on such terms and conditions in each case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act,

and the statute proceeded to declare that

the provisions of any Order in Council in that behalf shall have the same effect as if they had been enacted by the Parliament 20 of the United Kingdom of Great Britain and Ireland.

Negotiations ensued between representatives of the Company and of the Dominion Government, in which the Colonial Office also intervened. These culminated in an arrangement whereby, subject to certain terms and conditions, notably the payment to the Company of £300,000 stg. and the retention or reservation by it, or an undertaking for the re-grant to it of certain of its holdings, the Company was to surrender and relinquish to the Crown

all rights of government and proprietary rights and all other privileges, liberties, franchises, powers and authorities whatsoever 30 granted or purported to be granted by the said Letters Patent (of 1670);

and upon such surrender all such rights, franchises, etc. were to be "absolutely extinguished" and the territory so surrendered was, by Order in Council, to be transferred to, and to become part of, the Dominion of Canada as contemplated by the British North America Act. The negotiations and their outcome are evidenced by various resolutions, letters and documents set out in the case before us, which, however, it does not seem necessary to quote in detail. To enable the arrangement above sketched to be carried out, the Imperial Parliament passed the "Rupert's 40 Land Act, 1868." This statute it may, perhaps, be advisable to set out in part :

After reciting the grant by the Company's Charter and the relevant provision of s. 146 of the British North America Act, the statute proceeds :

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And whereas for the purpose of carrying into effect the Provisions of the said British North America Act, 1867, and of admitting Rupert's Land into the said Dominion as aforesaid upon such terms as Her Majesty thinks fit to approve, it is expedient that the said Lands, Territories, Rights, Privileges, Liberties, Franchises, Powers and Authorities so far as the same have been lawfully granted to the said Company shall be surrendered to Her Majesty, Her Heirs and Successors, upon such terms and conditions as may be agreed upon between Her Majesty, and the said Governor and Company as hereinafter mentioned :

Be it therefore enacted etc. as follows :

1. This Act may be cited as " Rupert's Land Act, 1868."

2. For the Purposes of this Act the Term " Rupert's Land " shall include the whole of the Lands and Territories held or claimed to be held by the said Governor and Company.

3. It shall be competent for the said Governor and Company to surrender to Her Majesty, and for Her Majesty by any Instrument under her Sign Manual and Signet, to accept, Surrender of all or any of the Lands, Territories, Rights, Privileges, Liberties, Franchises, Powers and Authorities, whatsoever granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land upon such terms and conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company; provided, however, that such Surrender shall not be accepted by Her Majesty until the Terms and Conditions upon which Rupert's Land shall be admitted into the said Dominion of Canada shall have been approved of by Her Majesty, and embodied in an address to Her Majesty from both the Houses of the Parliament of Canada in pursuance of the One Hundred and forty-sixth Section of the British North America Act, 1867, and that the said Surrender and Acceptance thereof shall be null and void unless within a month from the date of such Acceptance Her Majesty does by Order in Council under the Provisions of the said last recited Act admit Rupert's Land into the said Dominion; provided further, that no charge shall be imposed by such terms upon the Consolidated Fund of the United Kingdom.

4. Upon the acceptance by Her Majesty of such surrender all Rights of Government and Proprietary Rights, and all other Privileges, Liberties, Franchises, Powers and Authorities whatsoever granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, and which shall have been so surrendered, shall be absolutely extin-

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guished, provided that nothing herein contained shall prevent the said Governor and Company from continuing to carry on in Rupert's Land or elsewhere Trade and Commerce.

5. It shall be competent to Her Majesty by any such Order or Orders in Council as aforesaid, on Address from the Houses of Parliament of Canada, to declare that Rupert's Land shall, from a date to be therein mentioned, be admitted into and become part of the Dominion of Canada; and thereupon it shall be lawful for the Parliament of the Dominion of Canada from the date aforesaid to make, ordain and establish within the Land and Territory so admitted as aforesaid all such Laws, Institutions and Ordinances, and to constitute such Courts and Officers, as may be necessary for the Peace, Order and Good Government of Her Majesty's Subjects and others therein: Provided that, until otherwise enacted by the said Parliament of Canada, all the Powers, Authorities, and Jurisdiction of the Several Courts of Justice now established in Rupert's Land, and of the several Officers thereof, and of all Magistrates and Justices now acting within the said Limits, shall continue in full force and effect therein. 10

A formal deed of surrender to the Crown was executed by the Company in 1869 and in June, 1870, matters had so far progressed that an Imperial Order in Council was passed accepting such surrender and admitting Rupert's Land and the North Western Territory into the Dominion of Canada. Thus the vast territory extending from the Lake of the Woods and Lake Winnipeg and Hudson's Bay in the East to the Rocky Mountains in the West became part of Canada "from and after the 15th of July, 1870." 20

It is chiefly concerning the scope and effect of the deed of surrender of 1869 that the controversy now before us has arisen. No question is presented as to the respective interests of the Crown in right of Canada and of the Crown in right of the respective provinces; the only questions are whether the Hudson's Bay Company or the Crown is entitled to the precious metals, gold and silver, "in, under or upon" the lands which formed the subject of the deed of surrender or any of them, and, subject to what is to be said at a later stage as to the possible effect of subsequent legislation, the solution of these questions depends upon the construction of the terms of the deed of surrender itself. 30

In approaching this problem of construction the first feature of the deed which attracts our attention is the recital, immediately preceding the operative paragraph, that 40

the surrender hereinafter contained is intended to be made in pursuance of the agreement hereinafter stated,

*i.e.*, the agreement above outlined. It is of vital moment that the purpose and object of that agreement should be well in mind in construing the surrender in order that, consistently with its terms, it may be given the scope and meaning that will best carry into effect the intent with which



it was made. A company which had theretofore owned territories having the extent of a vast empire, which had throughout those territories enjoyed the widest powers of government and administration together with rights, facilities, franchises, privileges and prerogatives that usually appertain to a sovereign state, or, under the system now prevalent in the British Empire, to one of its self-governing constituent parts, and which, as incidental to the possession of such powers of government and administration, had been accorded the Royal prerogative of taking the Royal fish in the waters within and contiguous to its territories and also

10 the Royal prerogative of owning and exploiting the Royal Mines within such territories, was surrendering to the Crown all these powers, rights and franchises as well as its proprietary rights, and this surrender was being made with the object that the rights, governmental and proprietary, and the franchises so surrendered should be extinguished in order to pave the way for the transfer by Her Majesty of the fullest rights of government and administration over, and ownership of the territory in question to the new Dominion of Canada. The Company as an instrument of government was to pass from the scene and was thereafter to carry on solely as a trading corporation, holding its trading posts and stations,

20 with immediately adjacent parcels of land needed for their proper conduct, and receiving, as part consideration for the surrender it was making a right to parcels of land in the so-called Fertile Belt (part of the surrendered territory) equal to one-twentieth of the portions thereof to be opened for settlement. The Company was to exercise and possess for the future no rights other than those of a private trading corporation owning property in Canada. Indeed so complete and all-embracing was the contemplated surrender of its rights, powers and franchises, that it was deemed prudent, no doubt, to preclude possible misapprehension, explicitly to provide in "The Rupert's Land Act, 1868" (s. 4).

30 that nothing herein contained shall prevent the said Governor and Company from continuing to carry on in Rupert's Land or elsewhere Trade and Commerce.

Whatever reasons there may have been for the original grant to the Company of Royal prerogative rights cease to exist on the acceptance of the surrender. Governmental control over and administration of, and all beneficial interest in, the territories which the Company was relinquishing were thereafter to be vested in the Dominion of Canada. These were the salient features of the arrangement pursuant to, and as a step towards the accomplishment of which the deed of surrender was

40 made.

What did the Company purport to surrender?

The operative clause of the deed is in these terms:—

"Now know ye, and these presents witness, that, in pursuance of the powers and provisions of the 'Rupert's Land Act, 1868,' and on the terms and conditions aforesaid, and also on condition of this surrender being accepted pursuant to the provisions of that Act, the said Governor and

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Company do hereby surrender to the Queen's Most Excellent Majesty, all the rights of government, and other rights, privileges, liberties, franchises, powers and authorities, granted or purported to be granted to the said Governor and Company by the said recited Letters Patent of His Late Majesty King Charles the Second, and also all similar rights which may have been exercised or assumed by the said Governor and Company in any parts of British North America, not forming part of Rupert's Land or of Canada, or of British Columbia, and all the lands and territories within Rupert's Land (except and subject as in the said terms and conditions mentioned) granted or purported to be granted to the said Governor and Company by the said Letters Patent." 10

Reading this clause, for the moment, as if it did not contain the words in brackets, the generality of its language is *ex facie* unrestricted. All the Company's lands and territories within Rupert's Land (and it had no title to any lands in the North Western Territory except, perhaps, by occupation) granted or purported to be granted to it by its Royal Charter of 1670 were surrendered to the Crown. In those lands were undoubtedly then included the precious metals as well as other metals lying in, under or upon them. The precious metals therein were *partes soli* while owned by the Company. They had been "granted" to it by the same letters patent which "granted" the lands themselves. The Company held land and precious metals alike by the same proprietary title. The description in the deed of surrender—all the lands or territories within Rupert's Land . . . granted or purported to be granted to the said Governor and Company by the said Letters Patent—was, therefore, apt and sufficient to carry, and we have not the slightest doubt was meant to carry as *partes soli* the precious metals in the lands surrendered. Such is the literal and legal meaning of the words of the surrender; and that such was the intent with which they were used, having regard to the nature and object of the agreement pursuant to which the deed of surrender purports to have been made, does not, we think, admit of question. 20 30

But, while that may be so as to the surrendered lands in which the Company ceased to have any further interest, it is contended on its behalf that in the lands "retained" by it as posts, and in those to be "selected" as adjacent blocks, and also in the lands agreed to be granted to it as part consideration for the surrender to the Crown, its estate and interest (including the ownership of the precious metals therein) is still the same as that which it formerly held in all the territory of Rupert's Land under the Royal Charter of 1670. These particular lands, it was argued, did not pass from the Company by the Surrender, but were either excepted or reserved from it; and much emphasis was placed by counsel on the word "except" in the interjected parenthetical phrase "(except and subject to the said terms and conditions mentioned)" in the operative clause of the surrender. 40

It may be noted *en passant* that the word "except" does not occur in s. 3 of The Rupert's Land Act, 1868. It is found, however, in the

recital of the deed of surrender made in the Order in Council of the 23rd of June, 1870, and it certainly cannot be ignored. The real question is as to the purview and extent of the exception to which it refers.

The clauses in the terms and conditions set forth in the surrender dealing with the lands in which the Company did not finally relinquish all interest are as follows :

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“2. The Company to retain all the posts or stations now actually  
“ possessed and occupied by them or their officers or agents whether in  
“ Rupert’s Land or any other part of British North America, and may  
10 “ within twelve months after the acceptance of the said surrender select  
“ a block of land adjoining each of their posts or stations within any part  
“ of British North America not comprised in Canada and British Columbia  
“ in conformity, except as regards the Red River Territory, with a list  
“ made out by the Company and communicated to the Canadian  
“ Ministers, being the list in the annexed schedule. The actual survey  
“ is to be proceeded with, with all convenient speed . . . . .

“5. The Company may, at any time within fifty years after the accept-  
“ ance of the said surrender, claim in any township or district within the  
“ fertile belt in which land is set out for settlements, grants of land  
20 “ not exceeding one-twentieth part of the land so set out; the blocks so  
“ granted to be determined by lot, and the Company to pay a rateable  
“ share of the survey expenses, not exceeding 8 cents Canadian an acre.  
“ The Company may defer the exercise of their right of claiming their pro-  
“ portion of each township or district for not more than ten years after it is  
“ set out, but their claim must be limited to an allotment from the lands  
“ remaining unsold at the time they declare their intention to make it.

“6. For the purpose of the last article the fertile belt is to be bounded  
“ as follows : On the South by the United States boundary; on the West  
“ by the Rocky Mountains; on the North by the Northern Branch of the  
30 “ Saskatchewan River; on the East by Lake Winnipeg, the Lake of the  
“ Woods and the waters connecting them.”

The posts or stations to be “retained,” the blocks of adjacent land to be “selected” and the areas in the fertile belt of which the Company “might claim grants” seem to have been carefully distinguished each from the others and apparently an attempt was made to apply to each a term deemed apt to express the legal process to which it was designed to be subjected.

The word “retain” no doubt signifies that the particular property to which it refers remained with the Company and did not form part of  
40 the property surrendered. To property so retained the word “except” in the parenthetical clause of the operative paragraph of the deed of surrender finds appropriate application.

We are, however, here dealing with an exception and it occurs in a transfer, by way of surrender, to the Crown. Because it is an exception it should be taken most strongly against the party for whose benefit it is introduced (*Sheppard’s Touchstone*, 8th ed., p. 100; *Savill Brothers, Ltd.* v.



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*Bethell*, (1902), 2 Ch. 523, at pp. 537-8) and should be allowed to "control the instrument as far as the words of it extend and no further"—*Burnett v. Kensington*, (1797), 7 T.R., 216, note (a); and the circumstance that the exception occurs in a transfer of property to the Crown by no means weakens the case for the application of this ordinary rule of construction (1 Plowd. 243). The apparent purpose of the exception will be fully met if its operation be restricted to the buildings used as posts and stations (including out-houses, etc.) and in the lands they occupy the fee simple, which the subject ordinarily holds. Ownership of the precious metals in such subjacent soil cannot be regarded from any point of view as necessary to the fullest use and enjoyment of these posts or stations for the trading purposes to which the future activities of the Company were to be confined. Having regard, therefore, to the object of the exception, to the nature and purpose of the instrument in which it occurs and to the fact that it is an exception out of property being transferred to the Crown, we are satisfied that it should be held not to include the precious metals in the subjacent lands. These were left to pass under the general terms of the surrender to the Crown. 10

In the case of the lands to be "selected" and the parcels of which the Company was to become entitled to "claim grants" the intent of the instrument would rather seem to be that these lands were to pass to Her Majesty under the general surrender of all the Company's lands, but on the term or condition that, after they had been transferred to the Dominion of Canada and surveys had been made and the right of "selection" or "claim" had matured, the Crown through the Dominion Government would re-grant or re-transfer to the Company the blocks so to be "selected" and the parcels so to be "claimed." Upon such re-grants or re-transfers, however effected, precious metals in the lands so dealt with would not pass unless specifically mentioned and covered by apt and precise words. When the surrendered lands vested in the Crown and all effects of the earlier grant of them to the Company had been extinguished (The Rupert's Land Act, 1868, s. 4), the precious metals in such lands, which had been granted out of the prerogative, again belonged to the Crown by prerogative right (*Attorney General v. Trustees of the British Museum*, (1903), 2 Ch., 598, 602); whereas its title to the lands surrendered (exclusive of such metals) was proprietary. 20 30

It may be that upon the necessary surveys being completed, so that the lands which were to pass to the Company, whether as selected blocks or as part of the one-twentieth of the lands opened for settlement in the fertile belt, which it was entitled to claim—were designated and definitely located, it immediately acquired title to such lands, (*The Queen v. Farwell*, (1887), 14 Can. S.C.R., 392, 425; *Wright v. Roseberry*, (1886), 121 U.S. Reps., 488, 503) and that the subsequent grants when taken, and the notification of the surveys when given under s. 21 of the Dominion Lands Act, 1872, amounted to nothing more than evidence of titles already vested. Nevertheless, the facts that such grants were provided for and were taken, and that the title defined by s. 21 as being in fee simple was recognised by the Company as the complement of its rights under the 40

"reservation" in the deed of surrender, lose none of their significance. Titles evidenced by grants from the Crown to subjects and estates in fee simple do not, in the absence of explicit words apt and precise to indicate them, carry the prerogative right to the precious metals.

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Having regard to the nature and purpose of the agreement between the Hudson's Bay Company, the Canadian Government and the Imperial Government (represented by the Colonial Secretary) as a step towards the carrying out of which the deed of surrender was executed, it is scarcely possible to conceive that it was intended that here and there throughout  
10 the great territory which it was acquiring the Dominion of Canada should find numerous sections of land in which the prerogative right of the Crown to precious metals had been relinquished in favour of a purely trading Company. That it must have been the purpose of the high contracting parties to preserve intact the prerogative rights of the Crown throughout that new part of the Dominion seems to us reasonably certain; and it is satisfactory to find that upon a fair construction the provisions of the deed of surrender now under consideration give effect to that intent.

If, however, notwithstanding its ownership of the soil in which the precious metals in question lay, the right of the Company to them subsisted  
20 as a franchise, it is scarcely necessary to observe that the surrender to the Crown by the deed of 1869 of all franchises granted to the Company by the Royal Charter of 1670 is complete and without exception or qualification.

Subject to what is to be said as to the possible effect of subsequent Canadian legislation, we accordingly conclude that after the execution and acceptance of the deed of surrender in 1870 the precious metals in Rupert's Land again belonged to the Crown by prerogative right, as they always had in the North Western Territory, and that under the Order in Council of the 23rd June, 1870, the beneficial interest in, and the right of governmental control over them was transferred to and became vested  
30 in the Dominion of Canada. *The Trusts and Guarantee Co. v. The King*, (1916), 54 Can. S.C.R., 107; *Attorney General for Canada v. Attorney General for Alberta*, (1927), Can. S.C.R. p. 136.

The subsequent conduct of the Company in accepting grants from the Dominion of Canada of the "selected" blocks of land (including in the description of them the lands on which the "retained" posts and stations were actually erected) and in assenting to the provisions of the Dominion Lands Act of 1872 (ss. 17-21) and of the Canadian Order in Council of the 6th of December 1872 being substituted for those of the deed of surrender of Rupert's Land in all matters pertaining to the Company's one-twentieth  
40 of the lands within the fertile belt, afford a strong indication, to say the least, that the construction which we have put upon the stipulations of the deed of surrender in regard to the so-called "reservations" in the Company's favour, was that which the Company itself understood them to bear. By taking Crown grants of the selected blocks and of its one-twentieth share in the fractional townships and of substituted lands, where the sections that would have fallen to it were already *bona fide* settled on, and by acceding

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to the provisions of s. 21 of the Dominions Lands Act, under which it took statutory titles in fee simple, the Company implicitly recognised that its deed of surrender had operated to vest all these lands in the Crown, subject to the Company's right to have them re-granted or re-transferred to it in its new capacity as a purely trading corporation.

Inasmuch as the Manitoba Act (33 Vict., c. 3, s. 30), the Alberta Act (4-5 Edw. 7, c. 3, s. 23), and the Saskatchewan Act (4-5 Edw. 7, c. 42, s. 23), contain provisions which expressly save the rights and properties of the Hudson's Bay Company from prejudice, nothing in any of these statutes affects the question now before us.

10

There is, however, a provision of the Dominion Lands Act of 1872 which calls for special notice. Section 36 of that Act reads as follows :

36. No reservation of gold, silver, iron, copper, or other mines or minerals shall be inserted in any patent from the Crown granting any portion of the Dominion lands.

In the Consolidation of 1879 (42 Vict., c. 31) that section was repeated verbatim as s. 37. By an amending Act of 1880 (43 Vict., c. 26, s. 6) it was repealed. In 1883 (46 Vict., c. 17) there was a new consolidation of the Dominion Lands Act which contains the following section :

(43) It is hereby declared that no grant from the Crown, of 20  
lands in freehold or for any less estate, has operated or will operate as a conveyance of the gold and silver mines therein, unless the same are expressly conveyed in such grant.

In the revision of 1886 (c. 54) we find this section substantially repeated as s. 48, in the following terms :

No grant from the Crown of lands in freehold or for any less estate, shall be deemed to have conveyed or to convey the gold or silver mines therein, unless the same are expressly conveyed in such grant.

The section of 1886 was carried verbatim into the subsequent revision 30  
of 1906 (c. 55) as s. 161. But in the Dominion Lands Act, when again consolidated in 1908 (7 Edw. 7, c. 20), no similar section appears. It was strongly pressed upon us that the necessary implication of s. 36 in the Act of 1872 (s. 37 of 1879) is that the gold and silver in all Dominion lands (including those reserved for the Hudson's Bay Company) to be granted should pass to the grantee and it was said that it was upon this basis that the Company had agreed in January, 1873, to substitute the Dominion Lands Act and the Order in Council of the 6th of December, 1872, for the provisions contained in the deed of surrender, relating to the Company's one-twentieth 40  
of lands set out for settlement within the Fertile Belt, and that it had never assented to any change in the rights thus assured to it.



Under the law of England, as settled in the Mines Case, and under the well-established rule for the construction of statutes, that "it is presumed that the Legislature does not intend to deprive the Crown of any prerogative, right or property, unless it expresses its intention to do so in explicit terms or makes the inference irresistible (Maxwell on Interpretation of Statutes, 6 Ed., pp. 244-5; 31 Vict., c. 1, s. 6 (23))," we are of the opinion that s. 36 of the Dominion Lands Act of 1872 (s. 37 of the Act of 1879) had not the effect contended for. A direction for the omission of a reservation of gold and silver from grants of Dominion lands is not tantamount to an affirmative enactment that the Crown's right to gold and silver shall pass by every such grant. The Crown is not mentioned in the section and it is not a necessary implication from its language that the prerogative right of the Crown was meant to be affected by it. The direction for the omission from the grants of Dominion lands of any reservation of gold and silver may have been inofficious. It is quite probable that it did not occur to anybody at the time when s. 36 was inserted in that statute that the presence in it of the words "gold, silver" might give rise to such a contention as that now put forward. It would appear that when the possibility of such an implication being asserted was brought to the notice of Parliament it passed legislation declaratory of its contrary intent in the unmistakeable terms to which reference has been made (s. 43 of c. 17 of 46 Vict.).

There is nothing in this course of legislation which in our opinion supports the view that the precious metals (gold and silver) in Dominion lands ever passed to grantees of such lands under Crown grants thereof, unless such grants contained express words apt and precise to convey them. We cannot assent to the suggestion that in accepting the provisions of the Dominion Lands Act of 1872 and of the Order in Council of the 6th of December, 1872, the Hudson's Bay Company was under the mistaken impression that it would thereby become entitled to the precious metals underlying the lands for which it might subsequently obtain grants or titles by notification under s. 21 of the statute.

For the foregoing reasons we are of the opinion that the series of questions referred to the Court by His Excellency the Governor General in Council should be answered as follows:

*Question No. 1:* In whom, after the acceptance of the said surrender and the passing of the said Order in Council of the 23rd of June, 1870, were vested the precious metals, gold and silver, in, under or upon, the lands in the said area possessed and occupied at the date of the said surrender as posts or stations by the Company, whether in the Crown represented by the Dominion of Canada, or in the Company?

*Answer:* In the Crown.

*Question No. 2:* In whom were vested the precious metals, gold and silver, in under or upon the blocks of land adjoining the said posts or

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stations of the Company and selected by the Company, whether in the Crown represented by the Dominion of Canada, or in the Company:

(a) Upon the selection by the Company of the said blocks of land:

(b) Upon the issue to the Company of the Crown patents for the said blocks of land?

*Answer :* (a) In the Crown.

(b) In the Crown.

*Question No. 3 :—*In whom were vested the precious metals, gold and silver, in, under, or upon, the sections of lands or parts thereof in the said fertile belt which were vested in the Company by notification upon such notification, whether in the Crown represented by the Dominion of Canada, or in the Company? 10

*Answer :* In the Crown.

*Question No. 4 :—*In whom were vested the precious metals, gold and silver, in, under or upon, the land granted to the Company by letters patent from the Crown upon the issue thereof?

(a) In satisfaction of the Company's one-twentieth of the land in the fractional townships, or in the townships broken by lakes:

(b) In lieu of lands allotted to the Company found to be settled upon? 20

*Answer :* (a) In the Crown.

(b) In the Crown.

*Question No. 5 :—*In whom were vested the precious metals, gold and silver, in, under or upon, the lands granted to the Company by letters patent in lieu of land in which the Company relinquished and surrendered its rights to the Crown upon the issue of such patents?

*Answer :* In the Crown.

*Question No. 6 :—*In whom were vested the precious metals, gold and silver, in, under, or upon, the land granted to the Company by letters patent in lieu of the land conveyed by the Company to the Crown upon the issue of such patents? 30

*Answer :* In the Crown.

*Question No. 7 :—*If in any of such cases the precious metals, gold and silver, were vested in the Company, did the repeal of section 37 of the Dominion Lands Act, 1879, Chapter 31 of 42 Victoria, by section 6 of chapter 26 of 43 Victoria, or the enactment of section 43 of Chapter 17 of 46 Victoria, or of the Dominion Lands Act, Chapter 20 of 7 and 8 Edward VII, or any other enactment affect the ownership of the said precious metals in such case? 40

*Answer :—*The hypothesis of this question does not arise.

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## No. 15.

Order in Council granting special leave to appeal to His Majesty in Council.

AT THE COURT AT BUCKINGHAM PALACE

The 27th day of June 1927,

Present :

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

LORD COLEBROOKE

LORD CHAMBERLAIN

LT.-COL. HON. G. F. STANLEY

MAJOR G. C. TRYON.

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10 WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 16th day of June 1927 in the words following viz. :—

20 “ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Governor and Company of Adventurers of England trading into Hudson's Bay in the matter of an Appeal from the Supreme Court of Canada in the matter of a Reference as to the power of the Parliament of Canada and of the Government of Canada with respect to precious metals in under or upon certain lands of the Hudson's Bay Company and as to the ownership of such precious metals between the Petitioners Appellants and the Attorneys-General for the Dominion of Canada and the Provinces of Manitoba Saskatchewan and Alberta Respondents setting forth (amongst other things) that the subject matter of the Reference was the precious metals in and under lands granted to the Petitioners by the Crown and the principal question involved is whether the ownership of the precious metals is vested in the Petitioners or in the Crown :  
30 that no question arises as to the respective rights of the Crown in right of the Dominion of Canada and of the Crown in right of any Province : that in the circumstances set out in the Petition disputes arose between the Petitioners and the Government of the Dominion of Canada as to the ownership of the precious metals gold and silver in and under the Petitioners' lands : that by Orders of the Governor-General of the Dominion in Council made on the 26th January and 12th October 1926 the following questions were referred to the Supreme Court for hearing and consideration under the authority of Section 60 of the Supreme Court Act Ch. 139 of the Revised Statutes of Canada that is to say :—  
40 1. In whom after the acceptance of the said surrender and the passing of the said Order-in-Council of the 23rd day of June 1870 were vested the precious metals gold and silver in under or upon



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the lands in the said area possessed and occupied at the date of the said surrender as posts or stations by the Petitioners their officers or agents whether in the Crown represented by the Dominion of Canada or in the Petitioners? 2. In whom were vested the precious metals gold and silver in under or upon the blocks of land adjoining the said posts or stations of the Petitioners and selected by the Petitioners whether in the Crown represented by the Dominion of Canada or in Your Petitioners: (a) upon the selection by the Petitioners of the said blocks of land (b) upon the issue to the Petitioners of the Crown patents for the said blocks of land? 3. In whom were vested the precious metals gold and silver in under or upon the sections of land or parts thereof in the said fertile belt which were vested in the Petitioners by notification upon such notification whether in the Crown represented by the Dominion of Canada or in the Petitioners? 4. In whom were vested the precious metals gold and silver in under or upon the land granted to the Petitioners by letters patent from the Crown upon the issue thereof: (a) in satisfaction of the Petitioners' one-twentieth of the land in fractional townships or in townships broken by lakes (b) in lieu of lands allotted to the Petitioners but found to be settled upon? 5. In whom were vested the precious metals gold and silver in under or upon the lands granted to the Petitioners by letters patent in lieu of land in which the Petitioners relinquished and surrendered their rights to the Crown upon the issue of such patents? 6. In whom were vested the precious metals gold and silver in under or upon the land granted to the Petitioners by letters patent in lieu of land conveyed by the Petitioners to the Crown upon the issue of such patents? 7. If in any of such cases the precious metals gold and silver were vested in the Petitioners did the repeal of Section 37 of the Dominion Lands Act 1879 (Chapter 31 of 42 Victoria) by Section 6 of Chapter 26 of 43 Victoria or the enactment of Section 43 of Chapter 17 of 46 Victoria or of the Dominion Lands Act (Chapter 20 of 7 and 8 Edward VII) or any other enactment affect the ownership of the said precious metals in such case? that by the Order of the 12th October 1926 it was declared that it was not intended by the Reference to raise any issues as between the Dominion and any Province and that so far as any lands in the Province of Manitoba were concerned questions numbers 1 2 and 3 might be answered as if the words "represented by the Dominion of Canada" where they occurred after the word "Crown" in each of the said questions were struck out and that in answering any of the questions referred it would be sufficient to state what were the rights of the Crown and the Petitioners respectively without indicating whether any of the rights of the Crown were vested in the Dominion or the Province: that by an Order of the Supreme Court made on the 20th February 1926 upon an application for directions it was ordered that the

Solicitors for the Petitioners and the Attorneys-General of the Provinces of Ontario Quebec Alberta Saskatchewan British Columbia and Manitoba be notified of the hearing of the argument of the case and that the Attorney-General of Canada the Petitioners and the Attorneys-General of the Provinces therein aforesaid be at liberty to file factums and to appear upon the argument of the said Reference: that factums were filed by the Petitioners and by the Attorneys-General for the Dominion of Canada and the Provinces of Manitoba and Saskatchewan: that the Attorney-General for the Province of Alberta did not file a factum but supported the argument of the Attorney-General for the Dominion: that the judgment of the Supreme Court (Anglin C.J. and Duff Mignault Rinfret and Maclean *ad hoc* JJ.) was delivered by Anglin C.J. on the 20th April 1927 and answered all the questions 1 to 6 (inclusive) by the words "In the Crown" and in answer to question 7 stated that the hypothesis of that question did not arise: And humbly praying that the Petitioners may have special leave to appeal from the judgment of the Supreme Court dated the 20th April 1927 or for such other Order as to Your Majesty in Council shall seem meet:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and for the Attorneys-General for the Dominion of Canada and the Province of Alberta Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the judgment of the Supreme Court of Canada dated the 20th day of April 1927 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs: And their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioners upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

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## DOCUMENTS.

## No. 16.

The Royal Charter Incorporating the Hudson's Bay Company Granted by  
His Majesty King Charles II on Second of May, 1670.

(Schedule "A," referred to in No. 2.)

CHARLES THE SECOND, by the Grace of God King of England, Scotland, France and Ireland, Defender of the Faith, Etc. To all to whom these presents shall come, Greeting: Whereas our dear and entirely beloved Cousin, Prince Rupert, Count Palatine of the Rhine, Duke of Bavaria and Cumberland, etc., Christopher, Duke of Albemarle, William, Earl of Craven, Henry Lord Arlington, Anthony, Lord Ashley, Sir John Robinson, and Sir Robert Vyner, Knights and Baronets, Sir Peter Colleton, Baronet, Sir Edward Hungerford, Knight of the Bath, Sir Paul Neele, Knight, Sir John Griffith and Sir Philip Carteret, Knights, James Hayes, John Kirke, Francis Millington, William Prettyman, John Fenn, Esquires, and John Portman, Citizen and Goldsmith of London, have at their own great Costs and Charges, Undertaken an Expedition for Hudson's Bay in the North-west Part of America, for the Discovery of a new Passage into the South Sea, and for finding some Trade for Furs, Minerals, and other considerable commodities, and by such their Undertaking, have already made such Discoveries as do encourage them to proceed further in Pursuance of their said Design, by means whereof there may probably arise very great Advantages to Us and Our Kingdom. And whereas the said Undertakers, for their further encouragement in the said Design, have humbly besought Us to incorporate them and Grant unto them, and their Successors, the sole Trade and Commerce of all those Seas, Streights, Bays, Rivers, Lakes, Creeks, and Sounds, in whatsoever Latitude they shall be, that lie within the entrance of the Streights commonly called Hudson's Streights, together with all the Lands, Countries, and Territories, upon the Coasts and Confines of the Seas, Streights, Bays, Lakes, Rivers, Creeks and Sounds, aforesaid which are not now actually possessed by any of our subjects or by the subjects of any other Christian Prince or State. Now Know Ye, that We being desirous to promote all Endeavours tending to the publick Good of our People, and to encourage the said Undertaking, Have of Our Special Grace, certain Knowledge, and mere Motion, given, granted, ratified and confirmed, and by these presents for Us, Our Heirs and Successors, do give, grant, ratify and confirm unto our said Cousin Prince Rupert, Christopher, Duke of Albemarle, William, Earl of Craven, Henry, Lord Arlington, Anthony, Lord Ashley, Sir John Robinson, Sir Robert Vyner, Sir Peter Colleton, Sir Edward Hungerford, Sir Paul Neele, Sir John Griffith, and Sir Philip Carteret, James Hayes, John Kirke, Francis Millington, William Prettyman, John Fenn, and John Portman, that



they, and such others as shall be admitted into the said Society as is hereafter expressed, shall be one Body Corporate and Politique, in Deed and in Name by the Name of The Governor and Company of Adventurers of England, Trading into Hudson's Bay, and them by the Name of the Governor and Company of Adventurers of England, Trading into Hudson's Bay, one Body Corporate and Politique, in Deed and in Name, really and fully forever, for Us, Our Heirs and Successors, WE DO make, ordain, constitute, establish, confirm, and declare, by these Presents, and that by the same Name of Governor and Company of Adventurers of England,

10 Trading into Hudson's Bay, they shall have perpetual Succession, and that they and their Successors by the Name of the Governor and Company of Adventurers of England, trading into Hudson's Bay, be, and at all Times hereafter shall be, personable and capable in Law to have, purchase, receive, possess, enjoy and retain, Lands, Rents, Privileges, Liberties, Jurisdictions, Franchises, and Hereditaments, of what kind, Nature, or Quality, soever they be, to them and their Successors; and also to give, grant, demise, alien, assign, and dispose, Lands, Tenements, and Hereditaments, and to do and execute all and singular other Things by the same Name that to them shall or may appertain to do. And that they, and

20 their Successors, by the Name of The Governor and Company of Adventurers of England, trading into Hudson's Bay, may plead, and be impleaded, answer and be answered, defend, and be defended, in whatsoever Courts and Places, before whatsoever Judges and Justices, and other Persons and Officers, in all and singular Actions, Pleas, Suits, Quarrels, Causes, and Demands, whatsoever, of whatsoever kind, Nature, or Sort, in such Manner and Form as any other Our Liege People of this Our Realm of England, being Persons able and capable in Law, may, or can have, purchase, receive, possess, enjoy, retain, give, grant, demise, alien, assign, dispose, plead, defend and be defended, do, permit and

30 execute. And that the said Governor and Company of Adventurers of England, trading into Hudson's Bay, and their Successors, may have a Common Seal to serve for all the Causes and Businesses of them and their Successors, and that it shall and may be lawful to said Governor and Company, and their Successors, the same Seal, from time to time, at their Will and Pleasure, to break, change, and to make anew, or alter, as to them shall seem expedient. AND FURTHER WE WILL, and by these Presents for Us, Our Heirs and Successors, We do ordain, that there shall be from henceforth one of the same Company to be elected and appointed in such Form as hereafter in these Presents is expressed,

40 which shall be called The Governor of the said Company. And that the said Governor and Company shall or may elect Seven of their Number in such Form as hereafter in these Presents is expressed, which shall be called The Committee of the said Company, which Committee of Seven, or any Three of them, together with the Governor or Deputy Governor of the said Company for the time being, shall have the Direction of the Voyages of and for the said Company, and the Provision of the Shipping and Merchandises thereunto belonging, and also the Sale of

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all Merchandises, Goods, and other Things returned, in all or any the Voyages or Ships of or for the said Company, and the managing and handling of all other Businesses, Affairs and Things, belonging to the said Company. AND WE WILL, ordain, and grant by these Presents for Us, Our Heirs and Successors, unto the said Governor and Company and their Successors, that they the said Governor and Company and their Successors, shall from henceforth forever be ruled, ordered and governed, according to such Manner and Form as is hereafter in these Presents expressed, and not otherwise; And that they shall have, hold, retain, and enjoy the Grants, Liberties, Privileges, Jurisdictions and Immunities, only hereafter in these Presents granted and expressed, and no other. And for the better Execution of Our Will and Grant in this Behalf, We have Assigned, nominated, constituted, and made, and by these Presents for Us, Our Heirs, and Successors, We do assign, nominate, constitute, and make, Our said Cousin PRINCE RUPERT, to be the first and present Governor of the said Company, and to continue in the said office from the Date of these Presents until the Tenth November then next following, if he, the said Prince Rupert, shall so long live, and so until a new Governor be chosen by the said Company in Form hereafter expressed, AND ALSO WE HAVE assigned, nominated, and appointed, and by these Presents, for Us, Our Heirs, and Successors, WE DO, assign, nominate, and constitute the said Sir John Robinson, Sir Robert Vyner, Sir Peter Colleton, James Hayes, John Kirke, Francis Millington, and John Portman, to be the seven first and Present Committees of the said Company, from the Date of these Presents until the said 10th Day of November then also next following, and so until new Committees shall be chosen in Form hereafter expressed. AND FURTHER WE WILL and Grant by these Presents for Us, Our Heirs, and Successors, unto the said Governor and Company and Their Successors that it shall and may be lawful to and for the said Governor and Company for the Time being, or the Greater Part of Them Present at any publick Assembly, commonly called, The Court General to be holden for the said Company, the Governor of the said Company being always one, from time to time, to elect, nominate, and appoint one of the said Company to be Deputy to the said Governor; which Deputy shall take a corporal Oath, before the Governor and three or more of the Committee of the said Company for the time being, well, truly, and faithfully to execute his said Office of Deputy to the Governor of the said Company, and after his Oath so taken, shall and may from time to time, in the Absence of the said Governor, exercise and execute the Office of Governor of the said Company, in such Sort as the said Governor ought to do. AND FURTHER WE WILL and Grant by these Presents, for Us, Our Heirs, and Successors, unto the said Governor and Company of Adventurers of England, trading into the Hudson's Bay, and their Successors, that they, or the greater part of them, whereof the Governor for the Time being, or his Deputy, to be one, from time to time, and at all Times hereafter, shall and may have Authority and Power, yearly and every

year between the first and last Day of November; to assemble and meet together in some convenient Place, to be appointed from time to time by the Governor, or in his Absence by the Deputy of the said Governor for the Time being, and that they being so assembled, it shall and may be lawful to and for the said Governor or Deputy of the said Governor, and the said Company for the Time being, or the greater part of them which then shall happen to be present, whereof the Governor of the said Company or his Deputy for the time being to be one, to elect and nominate one of the said Company, which shall be Governor of the said

10 Company for one whole Year then next following, which Person being so elected and nominated to be Governor of the said Company as is aforesaid, before he be admitted to the Execution of the said Office, shall take a corporal Oath before the last Governor, being his Predecessor or his Deputy, and any three or more of the Committee of the said Company for the Time being, that he shall from time to time, well and truly execute the Office of Governor of the said Company, in all Things concerning the same; and that immediately after the same Oath so taken he shall and may execute and use the said Office of Governor of the said Company, for one whole year from Thence next following. And in like Sort We

20 will and grant, That as well every one of the above named to be of the said Company or Fellowship, as all others hereafter to be admitted, or free of the said Company, shall take a corporal Oath before the Governor of the said Company, or his Deputy for the Time being, to such Effect as by the said Governor and Company, or the greater Part of them, in any publick Court to be held for the said Company, shall be in reasonable and legal Manner set down and devised, before they shall be allowed or admitted to trade or traffick as a Freeman of the said Company, AND FURTHER WE WILL and grant by these Presents, for Us, Our

30 Heirs and Successors, unto the said Governor and Company, and their Successors, That the said Governor or Deputy Governor, and the rest of the said Company, and their Successors for the Time being or the greater Part of them, whereof the Governor or Deputy Governor, from time to time, to be one, shall and may from time to time, and at all Times hereafter, have Power and Authority yearly, and every Year, between the first and last day of November, to assemble and meet together in some convenient Place, from time to time to be appointed by the said Governor of the said Company, or in his Absence by his Deputy; and that they being so assembled, it shall and may be lawful to and for the said Governor or his Deputy, and the Company for the

40 Time being, or the greater Part of them, which then shall happen to be present, whereof the Governor of the said Company, or his Deputy for the time being to be one, to elect and nominate Seven of the said Company, which shall be a Committee of the said Company, for one whole Year from then next ensuing, which Persons being so elected and nominated to be a Committee of the said Company as aforesaid, before they be admitted to the Execution of their Office, shall take a corporal Oath, before the Governor or his Deputy, and any three or more of the said

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Committee of the said Company, being their last Predecessors, that they, and every of them, shall well and faithfully perform their said Office of Committees in all Things concerning the same, and that immediately after the said Oath so taken, they shall and may execute and use their said Office of Committee of the said Company, for one whole year from thence next following. AND MOREOVER, Our Will and Pleasure is, and by these Presents, for Us, Our Heirs and Successors, WE DO GRANT unto the said Governor and Company, and their Successors, that when, and as often as it shall happen, the Governor or Deputy Governor of the said Company for the Time being, at any Time within one Year after 10 that he shall be nominated, elected and sworn to the Office of the Governor of the said Company, as is aforesaid, to die or to be removed from the said Office, which Governor or Deputy Governor not demeaning himself well in his said office, We Will to be removable at the Pleasure of the rest of the said Company, or the greater Part of them which shall be present at their publick Assemblies, commonly called, Their General Courts holden for the said Company, that then, and so often it shall and may be lawful to and for the Residue of the said Company for the Time being, or the greater Part of them, within a convenient Time, after 20 the Death or Removing of any such Governor, or Deputy Governor to assemble themselves in such convenient Place as they shall think fit, for the Election of the Governor or Deputy Governor of the said Company; and that the said Company, or the greater Part of them, being then and there present, shall and may, then and there before their departure from the said Place, elect and nominate one other of the said Company to be Governor or Deputy Governor for the said Company, in the Place and Stead of him that so died or was removed; which Person being so elected and nominated to the Office of Governor or Deputy Governor of the said Company, shall have and exercise the said Office, for and 30 during the Residue of the said Year, taking first a corporal Oath, as is aforesaid for the due Execution thereof; and this to be done from time to time so often as the Case shall so require. AND ALSO, Our Will and Pleasure is, and by these presents for Us, Our Heirs and Successors, We do grant unto the said Governor and Company, that when, and as often as it shall happen any Person or Persons of the Committee of the said Company for the Time being at any Time within one Year next after that they or any of them shall be nominated, elected and sworn to the Office of Committee of the said Company as is aforesaid, to die or to be removed from the said office, which Committees not demeaning 40 themselves well in their said Office, We Will, to be removable at the Pleasure of the said Governor and Company, or the greater Part of them, whereof the Governor of the said Company for the Time being, or his Deputy, to be one; that then, and so often, it shall and may be lawful to and for the said Governor, and the rest of the Company for the Time being, or the greater Part of them, whereof the Governor for the Time being, or his Deputy, to be one, within convenient Time after the Death or removing of any of the said Committee, to assemble themselves in

such convenient Place as is or shall be usual and accustomed for the Election of the Governor of the said Company, or where else the Governor of the said Company for the Time being, or his Deputy, shall appoint. And that the said Governor and Company, or the greater Part of them, whereof the Governor for the Time being or his Deputy, to be one, being then and there present, shall and may, then and there, before their Departure from the said Place, elect and nominate one or more of the said Company, to be of the Committee of the said Company in the Place and Stead of him or them that so died, or were or was so removed, which

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- 10 Person or Persons so nominated and elected to the Office of Committee of the said Company, shall have and exercise the said Office, for and during the Residue of the said Year, taking first a corporal Oath as is aforesaid for the due Execution thereof, and this to be done from time to time, so often as the Case shall require. And to the End the said Governor and Company of Adventurers of England, trading into Hudson's Bay, may be encouraged to undertake, and effectually to prosecute the said design of Our more especial Grace, certain Knowledge, the mere motion, WE HAVE given, granted and confirmed, and by these Presents, for, Us, our Heirs and Successors, do give, grant and confirm, unto the said
- 20 Governor and Company, and their Successors, the sole Trade and Commerce of all these Seas, Straights, Bays, Rivers, Lakes, Creeks and Sounds, in whatsoever Latitude they shall be, that lie within the Entrance of the Straights commonly called Hudson's Straights, together with all the Lands and Territories upon the Countries, Coasts and Confines of the Seas, Bays, Lakes, Rivers, Creeks and Sounds aforesaid, that are not already actually possessed by or granted to any of our Subjects or possessed by the Subjects of any other Christian Prince or State, with the Fishing of all Sorts of Fish, Whales, Sturgeons, and all other Royal Fishes, in the Seas, Bays, Inlets and Rivers within the Premises, and
- 30 the Fish therein taken, together with the Royalty of the Sea upon the Coasts within the Limits aforesaid, and all Mines Royal, as well discovered as not discovered, of Gold, Silver, Gems, and precious Stones, to be found or discovered within the Territories, Limits, and Places aforesaid, and that the said Land be from henceforth reckoned and reputed as one of our Plantations or Colonies in America, called Rupert's Land.

- AND FURTHER WE DO by these Presents, for Us, Our Heirs and Successors, make, create and constitute, the said Governor and Company for the Time being, and their Successors, the true and absolute Lords and Proprietors of the same Territory, Limits and Places aforesaid, and of
- 40 all other the Premises, SAVING ALWAYS the Faith, Allegiance and Sovereign Dominion due to us, Our Heirs and Successors for the same TO HAVE, HOLD, possess and enjoy the said Territory, Limits and Places, and all and singular other the premises, hereby granted as aforesaid, with their, and every of their Rights, Members, Jurisdictions, Prerogatives, Royalties and Appurtenances whatsoever, to them the said Governor and Company, and their Successors for ever TO BE HOLDEN of Us, Our Heirs and Successors, as of Our Manor of East Greenwich in our County

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of Kent, in free and common Soccage, and not in Capite or by Knight's Service; YIELDING AND PAYING yearly to Us, Our Heirs and Successors, for the same, two Elks and two black Beavers, whensoever, and as often as we, Our Heirs and Successors shall happen to enter into the said Countries, Territories and Regions hereby granted, AND FURTHER, Our Will and Pleasure is, and by these Presents, for Us, Our Heirs and Successors, We do grant unto the said Governor and Company, and to their Successors, that it shall and may be lawful, to and for the said Governor and Company, and their Successors, from time to time, to assemble themselves, for or about any the Matters, Causes, Affairs, 10  
 or Businesses of the said Trade, in any Place or Places for the same convenient, within our Dominions or elsewhere, and there to hold Court for the said Company, and the Affairs thereof; and that also, it shall and may be lawful, to and for them, and the greater Part of them, being so assembled, and that shall then and there be present, in any such Place or Places whereof the Governor or his Deputy for the Time being to be one, to make, ordain, and constitute, such and so many reasonable Laws, Constitutions, Orders and Ordinances, as to them, or the greater part of them being then and there present, shall seem necessary and convenient 20  
 for the good Government of the said Company, and of all Governors of Colonies, Forts, and Plantations, Factors, Masters, Mariners and other Officers employed, or to be employed, in any of the Territories and Lands aforesaid, and in any of their Voyages; and for the better Advancement and Continuance of the said Trade, or Traffic and Plantations, and the same Laws, Constitutions, Orders and Ordinances so made, to put in Use and execute accordingly, and at their Pleasure to revoke and alter the same, or any of them, as the occasion shall require; and that the said Governor and Company, so often as they shall make, ordain, or establish any such Laws, Constitutions, Orders and Ordinances, in such Form as 30  
 aforesaid, shall and may lawfully impose, ordain, limit and provide such pains, Penalties and Punishments upon all Offenders, contrary to such Laws, Constitutions, Orders and Ordinances, or any of them as to the said Governor and Company for the Time being, or the greater Part of them then and there being present, the said Governor or his Deputy being always one, shall seem necessary, requisite, or convenient for the Observation of the same Laws, Constitutions, Orders and Ordinances; and the same Fines and Amerciaments shall and may by their Officers and Servants, from time to time be appointed for that Purpose levy, take and have, to the Use of the said Governor and Company, and their Successors, without the Impediment of Us, Our Heirs or Successors, or of any of the Officers 40  
 or Ministers of Us, Our Heirs or Successors, and without any Account therefore to Us, Our Heirs or Successors, to be made. All and singular which Laws, Constitutions, Orders and Ordinances so as aforesaid, to be made, We will to be duly observed and kept under the Pains and Penalties therein to be contained; so always as the said Laws, Constitutions, Orders and Ordinances, Fines and Amerciaments, be reasonable, and not contrary or repugnant, but as near as may be agreeable to the Laws, Statutes or



Customs of this Our Realm. AND FURTHERMORE, of our ample and abundant Grace, certain Knowledge, and mere Motion WE HAVE granted, and by these Presents for Us, Our Heirs and Successors, do grant unto the said Governor and Company, and their Successors, that they, and their Successors and their Factors, Servants and Agents, for them, and on their behalf and not otherwise, shall forever hereafter have, use and enjoy, not only the whole, entire, and only Trade and Traffick, and the whole, entire and only Liberty, Use and Privilege, of Trading and Trafficking to and from the Territory, Limits and Places aforesaid; but

10 also the whole and entire Trade and Traffick to and from all Havens, Bays, Creeks, Rivers, Lakes and Seas, into which they shall find Entrance or Passage by Water or Land out of the Territories, Limits or Places aforesaid; and to and with all the Natives and People, inhabiting or which shall inhabit within the Territories, Limits and Places aforesaid; and to and with all other Nations inhabiting any of the Coast adjacent to the said Territories, Limits and Places which are not already possessed as aforesaid, or whereof the sole Liberty or Privilege of Trade and Traffick is not granted to any other of Our Subjects. AND WE, of our further Royal Favour, and of Our more especial Grace, certain Knowledge and mere Motion,

20 Have granted, and by these Presents for Us, Our Heirs and Successors, do grant to the said Governor and Company, and to their Successors, that neither the said Territories, Limits and Places, hereby granted as aforesaid, nor any Part thereof, nor the Islands, Havens, Ports, Cities, Towns or Places, thereof, or therein contained, shall be visited, frequented or haunted, by any of the Subjects of Us, Our Heirs and Successors, contrary to the true Meaning of these Presents, and by virtue of Our Prerogative Royal, which we will not have in that Behalf argued or brought into Question; We Streightly charge, command and prohibit, for Us, Our Heirs and Successors, all the Subjects of Us, Our Heirs and Successors, of what Degree

30 or Quality soever they be, that none of them directly or indirectly, do visit, haunt, frequent, or Trade, Traffick or Adventure, by way of Merchandise, into or from any of the said Territories, Limits or Places, hereby granted or any, or either of them, other than the said Governor and Company, and such particular Persons as now be, or hereafter shall be, of that Company, their Agents, Factors and Assigns, unless it be by the License and Agreement of the said Governor and Company in writing first had and obtained, under their Common Seal, to be granted, upon pain that every such Person or Persons that shall Trade or traffick into or from any of the Countries, Territories or Limits aforesaid, other than the said

40 Governor and Company, and their Successors, shall incur our indignation, and the forfeiture, and the loss of the Goods, Merchandises and other Things whatsoever, which so shall be brought into this Realm of England, or any of the Dominions of the same, contrary to our said prohibition, or the purport or true meaning of these Presents, for which the said Governor and Company shall find, take and seize, in other Places out of Our Dominions, where the said Company, their Agents, Factors or Ministers shall Trade, Traffick or inhabit, by virtue of these our Letters Patent, as also the Ship

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and Ships, with the furniture thereof, wherein such goods, Merchandises, and other Things, shall be brought and found, the one-half of all the said forfeitures to be to Us, Our Heirs and Successors, and the other half thereof We do by these Presents clearly and wholly for Us, Our Heirs and Successors, give and grant unto the said Governor and Company, and their Successors, AND FURTHER all and every the said Offenders for their said Contempt to suffer such other punishment as to Us, Our Heirs and Successors, for so high a Contempt, shall seem meet and convenient, and not to be in anywise delivered until they, and every of them, shall become bound unto the said Governor for the time being in the sum of One Thousand Pounds at the least, at no time then after to trade or traffick into any of the said Places, Seas, Streights, Bays, Ports, Havens or Territories, aforesaid contrary to our express Commandment in that Behalf set down and published. 10

AND FURTHER of Our more especial Grace, We have condescended and granted, and by these Presents for Us, Our Heirs and Successors, Do grant unto the said Governor and Company, and their Successors that We, Our Heirs and Successors, will not grant Liberty, License or Power to any Person or Persons whatsoever, contrary to the Tenor of these Our Letters Patent, to trade, traffick or inhabit, unto or upon any the Territories, Limits or Places, afore specified, contrary to the true meaning of these Presents, without the consent of the said Governor and Company, or the most part of them. AND of Our more abundant Grace and Favour to the said Governor and Company, we do hereby declare Our Will and Pleasure to be, that if it shall so happen, that any of the Persons free, or to be free of the said Company of Adventurers of England, trading into Hudson's Bay, who shall, before the going forth of any Ship or Ships appointed for a Voyage, or otherwise, promise or agree by Writing under his or their Hands, to adventure any Sum or Sums of Money, towards the furnishing any Provision, or Maintenance of any Voyage, or Voyages, set forth, or to be set forth, or intended or meant to be set forth, by the said Governor and Company, or the more part of them Present at any publick assembly, commonly called their General Court, shall not within the space of twenty days next, after warning given to him or them, by the said Governor or Company, or their known Officer or Minister, bring in and deliver to the Treasurer or Treasurers appointed for the Company, such sums of money as shall have been expressed and set down in Writing, by the said Person or Persons, subscribed with the Name of said Adventurer or Adventurers, that then, and at all times after, it shall and may be lawful, to and for the said Governor and Company, or the more part of them Present, whereof the said Governor or his Deputy to be one, at any of their General Courts or General Assemblies, to remove and disfranchise him or them, and every such person and persons at their Wills and pleasures, and he or they so removed and disfranchised not to be permitted to trade into the Countries, Territories and limits aforesaid, or any part thereof, nor to have any adventure or stock going or remaining with or amongst the said Company, without the special license of the said Governor and 30 40

Company, or the more part of them present at any General Court, first had and obtained in that behalf, anything before in these Presents to the Contrary thereof in anywise notwithstanding. And Our Will and Pleasure is, and hereby we do also ordain, that it shall and may be lawful to, and for the said Governor and Company, or the greater part of them, whereof the Governor for the time being, or his Deputy to be one, to admit into, and to be of the said Company all such servants, or factors, of or for the said Company and all such others as to them, or the most part of them present, at any Court held for the said Company, the Governor or his  
 10 Deputy being one, shall be thought fit and agreeable with the orders and ordinances made and to be made for the Government of the said Company.

AND further, Our Will and pleasure is, and by these Presents for Us, Our Heirs and Successors, we do grant unto the said Governor and Company, and to their successors, that it shall and may be lawful in all elections and by-laws to be made by the General Court of the Adventurers of the said Company, that every person shall have a number of votes according to his stock, that is to say, for every hundred pounds by him subscribed or brought into the present stock, one vote, and that  
 20 any of those that have subscribed less than one hundred pounds, may join their respective sums to make up one hundred pounds, and have one vote jointly for the same, and not otherwise; And further, of Our especial Grace, certain knowledge and mere motion, we do, for us, our heirs and successors, grant to and with the said Governor and Company of Adventurers of England, trading into Hudson's Bay, that all lands, islands, territories, plantations, forts, fortifications, factories or colonies, where the said Company's factories and trade are or shall be, within any of the ports or places afore limited, shall be immediately and from henceforth under the power and command of the said Governor and Company, their  
 30 successors and assigns; saving the faith and allegiance due to be performed to Us, Our Heirs and Successors, as aforesaid; and that the said Governor and Company shall have liberty, full power and authority to appoint and establish Governors, and all other officers to govern them, and that the Governor and his Council of the several and respective places where the said Company shall have plantations, forts, factories, colonies or places of trade within any of the countries, lands, or territories hereby granted, may have power to judge all persons belonging to the said Governor and Company, or that shall live under them, in all causes, whether civil or criminal, according to the laws of this Kingdom, and to execute justice  
 40 accordingly; and in case any crime, misdemeanor, shall be committed in any of the said Company's plantations, forts, factories, or places of trade within the limits aforesaid, where judicature cannot be executed for want of a Governor and Council there, then in such case it shall and may be lawful for the Chief Factor of that place and his Council to transmit the party, together with the offence, to such other plantations, factory, or fort where there shall be a Governor and Council, where justice may be executed, or into this Kingdom of England, as shall be thought most

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convenient, there to receive such punishment as the nature of his offence shall deserve; And moreover, Our Will and pleasure is, and by these presents for Us, Our Heirs and Successors, we do give and grant unto the said Governor and Company and their successors, free liberty and license, in case they conceive it necessary, to send either ships of war, men or ammunition unto any of their plantations, forts, factories, or places of trade aforesaid for the security and defence of the same, and to choose commanders and officers over them, and to give them power and authority, by commission under their common seal, or otherwise, to continue or make peace or war with any Prince or people whatsoever that are not Christians, 10  
in any places where the said Company shall have any plantations, forts or factories, or adjacent thereunto, as shall be most for the advantage and benefit of the said Governor and Company and of their trade; and also to right and recompense themselves upon the goods, estates, or people of those parts, by whom the said Governor and Company shall sustain any injury, loss or damage, or upon any other people whatsoever, that shall any way, contrary to the intent of these presents, interrupt, wrong or injure them in their said trade, within the said places, territories and limits granted by this Charter; And that it shall and may be lawful to and for the said Governor and Company, and their successors from time 20  
to time, and at all times from henceforth, to erect and build such castles, fortifications, forts, garrisons, colonies, plantations, towns or villages, in any parts or places within the limits and bounds granted before in these presents unto the said Governor and Company, as they in their discretion shall think fit and requisite, and for the supply of such as shall be needful and convenient to keep and be in the same, to send out of this Kingdom to the said castles, forts, fortifications, garrisons, colonies, plantations, towns or villages, all kinds of clothing, provision, of victuals, ammunition, and implements necessary for such purpose, paying the duties and customs for the same, as also to transport and carry over such number of men being 30  
willing thereunto, or not prohibited, as they shall think fit, and also to govern them in such legal and reasonable manner as the said Governor and Company shall think best, and to inflict punishment for misdemeanors or impose such fines upon them for breach of their orders as in these presents are formerly expressed.

And further, our Will and pleasure is, and by these Presents, for Us, Our Heirs and Successors, we do grant unto the said Governor and Company, and to their Successors, full power and lawful authority to seize upon the persons of all such English, or any other Our subjects, which shall sail into Hudson's Bay, or inhabit in any of the Countries, Islands 40  
or Territories hereby granted to the said Governor and Company, without their leave and license, in that behalf first had and obtained, or that shall contemn or disobey their orders, and send them to England; and that all and every person or persons, being our subjects, anyways employed by the said Governor and Company, within any the parts, places and limits aforesaid, shall be liable unto and suffer such punishment for any

offences by them committed in the parts aforesaid, as the President and Council for the said Governor and Company there shall think fit, and the merit of the offence shall require, as aforesaid; and in case any person or persons being convicted and sentenced by the President and Council of the said Governor and Company, in the Countries, lands, or limits aforesaid, their factors or agents there, for any offence by them done, shall appeal from the same, that then and in such case it shall and may be lawful to and for the said President and Council, factors or agents, to seize upon him or them, and to carry him or them home prisoners into England, 10 to the said Governor and Company, there to receive such condign punishment as his cause shall require, and the law of this nation allow of; and for the better discovery of abuses and injuries to be done unto the said Governor and Company, or their successors, by any servant by them to be employed in the said voyages and plantations, it shall and may be lawful to and for the said Governor and Company, and their respective President, Chief Agent or Governor in the parts aforesaid, to examine upon oath all factors, masters, pursers, super-cargoes, commanders of castles, forts, fortifications, plantations or colonies, or other persons touching or concerning any matter or thing in which by law or usage an oath may be 20 administered, so as the said oath, and the matter therein contained be not repugnant, but agreeable to the laws of this realm; And we do hereby streightly charge and command all and singular our Admirals, Vice-Admirals, Justices, Mayors, Sheriffs, Constables, Bailiffs, and all and singular other our officers, ministers, liege-men and subjects whatsoever to be aiding, favoring, helping and assisting to the said Governor and Company, and to their successors and to their deputies, officers, factors, servants, assigns and ministers, and every of them, in executing and enjoying the premises, as well on land as on sea, from time to time, when any of you shall thereunto be required; any statute, act, ordinance, 30 proviso, proclamation or restraint heretofore had, made, set forth, ordained or provided, or any other matter, cause or thing whatsoever to the contrary in anywise notwithstanding.

IN WITNESS WHEREOF we have caused these Our Letters to be made Patent.

WITNESS Ourselves at Westminster, the second day of May, in the two and twentieth year of our reign.

By Writ of Privy Seal.

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## Address to Her Majesty the Queen.

*(Schedule "A," referred to in No. 22.)*

ADDRESS TO HER MAJESTY THE QUEEN from the Senate and  
House of Commons of the Dominion of Canada.

To the Queen's Most Excellent Majesty.

## MOST GRACIOUS SOVEREIGN,

We, Your Majesty's most dutiful and loyal subjects, the Senate and Commons of the Dominion of Canada in Parliament assembled, humbly approach your Majesty for the purpose of representing:—

10

That it would promote the prosperity of the Canadian people, and conduce to the advantage of the whole Empire, if the Dominion of Canada, constituted under the provisions of "British North America Act, 1867," were extended westward to the shores of the Pacific Ocean.

That the colonization of the fertile lands of the Saskatchewan, the Assiniboine, and the Red River districts; the development of the mineral wealth which abounds in the region of the North-west; and the extension of commercial intercourse through the British possessions in America from the Atlantic to the Pacific, are alike dependent on the establishment of a stable government for the maintenance of law and order in the North-  
Western Territories.

20

That the welfare of a sparse and widely scattered population of British subjects of European origin, already inhabiting these remote and unorganized territories, would be materially enhanced by the formation therein of political institutions bearing analogy, as far as circumstances will admit, to those which exist in the several Provinces of this Dominion.

That the 146th section of the "British North America Act, 1867," provides for the admission of Rupert's Land and the North-western Territory, or either of them, into union with Canada, upon the terms and conditions to be expressed in addresses from the Houses of Parliament of this Dominion to your Majesty, and which shall be approved of by your Majesty in Council.

30

That we do therefore most humbly pray that your Majesty will be graciously pleased, by and with the advice of your Most Honourable Privy Council, to unite Rupert's Land and the North-western Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good Government; and we most humbly beg to express to your Majesty that we are willing to assume the duties and obligations of government and legislation as regards these territories.

That in the event of your Majesty's Government agreeing to transfer to Canada the jurisdiction and control over the said region, the Government and Parliament of Canada will be ready to provide that the legal rights of any corporation, company or individual within the same shall be

40



respected, and placed under the protection of Courts of competent jurisdiction. Documents.

And furthermore that, upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.

All of which we humbly pray your majesty to take into your Majesty's most gracious and favorable consideration.

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Address to  
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the Queen,  
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—continued.

10 The Senate. Tuesday, December 17th, 1867.

(Signed) JOSEPH CAUCHON, *Speaker*.

House of Commons, Monday, December 16th, 1867.

JAMES COCKBURN, *Speaker*.

#### No. 18.

Rupert's Land Act, 1868 (31-32 Victoria, Chapter 105).

(Schedule "B," referred to in No. 2.)

No. 18.  
Rupert's  
Land Act,  
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An Act for enabling Her Majesty to accept a Surrender upon Terms of the Lands, Privileges, and Rights of "The Governor and Company of Adventurers of England trading into Hudson's Bay," and for admitting the same into the Dominion of Canada.

20

(31st July, 1868.)

WHEREAS by certain Letters Patent granted by His late Majesty King Charles the Second in the Twenty-second Year of his reign certain Persons therein named were incorporated by the Name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," and certain lands and territories, Rights of Government, and other Rights, Privileges, Liberties, Franchises, Powers and Authorities, were thereby granted or purported to be granted to the said Governor and Company in His Majesty's Dominions in North America :

30

And whereas by the British North America Act, 1867, it was (amongst other things) enacted that it should be lawful for Her Majesty, by and with the advice of Her Majesty's Most Honourable Privy Council, on Address from the Houses of the Parliament of Canada, to admit Rupert's Land, and the North-Western Territory or either of them, into the Union on such Terms and Conditions as are in the Address expressed and as Her Majesty thinks fit to approve, subject to the provisions of the said Act :

And whereas for the Purpose of carrying into effect the Provisions of the said British North America Act, 1867, and of admitting Rupert's Land into the said Dominion as aforesaid upon such Terms as Her Majesty

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thinks fit to approve, it is expedient that the said Lands, Territories, Rights, Privileges, Liberties, Franchises, Powers, and Authorities so far as the same have been lawfully granted to the said Company should be surrendered to Her Majesty, Her Heirs and Successors, upon such terms and Conditions as may be agreed upon between Her Majesty, and the said Governor and Company as hereinafter mentioned:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

10

1. This Act may be cited as "Rupert's Land Act, 1868."

2. For the Purposes of this Act the Term "Rupert's Land" shall include the whole of the Lands and Territories held or claimed to be held by the said Governor and Company.

3. It shall be competent for the said Governor and Company to surrender to Her Majesty, and for Her Majesty by any Instrument under Her Sign Manual and Signet, to accept a Surrender of all or any of the Lands, Territories, Rights, Privileges, Liberties, Franchises, Powers and authorities, whatsoever granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land 20 upon such Terms and Conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company; provided, however, that such Surrender shall not be accepted by Her Majesty until the Terms and Conditions upon which Rupert's Land shall be admitted into the said Dominion of Canada shall have been approved of by Her Majesty, and embodied in an Address to Her Majesty from both the Houses of the Parliament of Canada in pursuance of the One Hundred and forty-sixth Section of the British North America Act, 1867; and that the said Surrender and Acceptance thereof shall be null and void unless within 30 a month from the date of such Acceptance Her Majesty does by Order in Council under the Provisions of the said last recited Act admit Rupert's Land into the said Dominion; provided further, that no Charge shall be imposed by such Terms upon the Consolidated Fund of the United Kingdom.

4. Upon the acceptance by Her Majesty of such Surrender all Rights of Government and Proprietary Rights, and all other Privileges, Liberties, Franchises, Powers and Authorities whatsoever, granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, and which shall have been so surrendered, shall be absolutely extinguished; provided that nothing herein contained shall 40 prevent the said Governor and Company from continuing to carry on in Rupert's Land or elsewhere Trade and Commerce.

5. It shall be competent to Her Majesty by any such Order or Orders in Council as aforesaid, on Address from the Houses of the Parliament of Canada, to declare that Rupert's Land shall, from a date to be therein mentioned, be admitted into and become part of the Dominion of Canada;

and thereupon it shall be lawful for the Parliament of Canada from the date aforesaid to make, ordain, and establish within the Land and Territory so admitted as aforesaid all such Laws, Institutions and Ordinances, and to constitute such Courts and Officers, as may be necessary for the Peace, Order, and good Government of Her Majesty's Subjects and others therein: Provided that, until otherwise enacted by the said Parliament of Canada, all the Powers, Authorities, and Jurisdiction of the Several Courts of Justice now established in Rupert's Land, and of the several Officers thereof, and of all Magistrates and Justices now acting  
 10 within the said Limits, shall continue in full force and effect therein.

Documents.  
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 No. 18.  
 Rupert's  
 Land Act,  
 31st July  
 1868—con-  
 tinued.

### No. 19.

#### Resolutions of Canadian Parliament.

(Schedule "B," referred to in No. 22.)

No. 19.  
 Resolutions  
 of Canadian  
 Parliament,  
 28th May  
 1869.

May 28th, 1869.

Resolved,—That the Senate and Commons of the Dominion of Canada during the first session of the first Parliament of Canada, adopted an Address to Her Majesty, praying that Her Majesty would be graciously pleased, by and with the advice of Her Most Honorable Privy Council, under the provisions of 146th section of "The British North America Act,  
 20 1867," and on the terms specified in the Address, to unite Rupert's Land and the North-west Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government, and assuring Her Majesty of the willingness of the Parliament of Canada to assume the duties and obligations of government and legislation as regards those territories.

Resolved,—That the Joint Address of the Senate and Commons of Canada was duly laid at the foot of the throne and that Her Majesty, by despatch from the Right Honorable the Secretary of State for the Colonies, to the Governor General of Canada, under date of 23rd of April, 1868,  
 30 signified Her willingness to comply with the prayer of the said Address; but She was advised that the requisite powers of government and legislation could not, consistently with the existing charter of the Hudson's Bay Company, be transferred to Canada without an Act of Parliament, which Act was subsequently passed by the Imperial Parliament, and received Her Majesty's Assent on the 31st July, 1868.

Resolved,—That by despatch dated 8th August, 1868, from the Honorable Secretary of State for the Colonies, the Governor-General was informed, that in pursuance of the powers conferred by the Act for the surrender of the Hudson's Bay Territories to Her Majesty, he proposed  
 40 to enter into negotiations with the Company as to the terms of such surrender, whereupon, under authority of an order of the Governor-General in Council of the 1st October, 1868, the Honorable Sir George Et. Cartier, Baronet,



Documents.  
—  
No. 19.  
Resolutions  
of Canadian  
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tinued.

and the Honorable William MacDougall, C.B., were appointed a Delegation to England, to arrange the terms for the acquisition by Canada of Rupert's Land, and by another Order in Council of the same date, were authorized to arrange for the admission of the North-west Territory into union with Canada, either with or without Rupert's Land, as it might be found practicable and expedient.

Resolved,—That the Delegates proceeded on their mission to England and entered into negotiations with His Grace the Duke of Buckingham and Chandos, the Secretary of State for the Colonies, and afterwards with the Right Honorable Earl Granville, his successor in office, for the acquisition by Canada of the territorial and other rights claimed by the Hudson's Bay Company in Rupert's Land, and in any other part of British North America, not comprised in Rupert's Land, Canada, or British Columbia. That terms of agreement were conditionally assented to by the Delegates on behalf of the Dominion and on their return to Canada were submitted with a report dated 8th May, 1869, which was approved by His Excellency the Governor in Council, on the 14th day of the same month. 10

Resolved,—That the Senate will be prepared to concur in accepting the transfer of the territorial and other rights of the Hudson's Bay Company in Rupert's Land, and in any other part of British North America, not comprised in Rupert's Land, Canada or British Columbia, on the terms conditionally agreed to on behalf of the Government of Canada, by the Hon. Sir George Et. Cartier, Baronet, and the Hon. William MacDougall, C.B., and on behalf of the Hudson's Bay Company by Sir Stafford H. Northcote, Governor of that Company, and approved by His Excellency in Council as aforesaid, which terms are set forth in a letter from Sir Frederic Rogers, Under-Secretary of State for the Colonies, of the 9th March, 1869, communicated to the Delegates by direction of Earl Granville, and in two subsequent Memorandums dated respectively 22nd and 29th March, 1869, containing a modification of such terms, and are in the words and figures following :— 30

“ Terms, as stated in the Letter from Sir Frederic Rogers, of March, 1869.

“ 1. The Hudson's Bay Company to surrender to Her Majesty all the rights of Government, property, &c., in Rupert's Land which are specified in 31 & 32 Vict., cap. 105, sec. 4; and also all similar rights in any other part of British North America, not comprised in Rupert's Land, Canada or British Columbia.

“ 2. Canada is to pay to the Company 300,000*l.* when Rupert's Land is transferred to the Dominion of Canada. 40

“ 3. The Company may, within twelve months of the surrender, select a block of land adjoining each of its stations within the limits specified in Article 1.

“ 4. The size of the blocks not to exceed \_\_\_\_\_ acres in the Red River Territory, and the aggregate extent of the blocks is not to exceed 50,000 acres.

" 5. So far as the configuration of the country admits, the blocks are to be in the shape of parallelograms, of which the length is not more than double the breadth.

" 6. The Hudson's Bay Company may, for fifty years after the surrender claim in any township or district within the Fertile Belt in which land is set out for settlement, select grants of land, not exceeding one-twentieth of the land so set out. The blocks so granted to be determined by lot, and the Hudson's Bay Company to pay a rateable share of the survey expenses, not exceeding an acre.

Documents.

No. 19.

Resolutions  
of Canadian  
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tinued.

10 " 7. For the purpose of the present agreement, the Fertile Belt is to be bounded as follows:—On the south by the United States boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them.

" 8. All titles to land up to the 8th March, 1869, conferred by the Company, are to be confirmed.

20 " 9. The Company is to be at liberty to carry on its trade without hindrance, in its corporate capacity, and no exceptional tax is to be placed on the Company's land, trade or servants, nor any import duty on goods introduced by them previous to the surrender.

" 10. Canada is to take over the materials of the electric telegraph at cost price, such price including transport but not including interest for money, and subject to a deduction for ascertained deteriorations.

" 11. The Company's claim to land under agreement of Messrs. Van-koughnet and Hopkins to be withdrawn.

" 12. The details of this arrangement, including the filling up the blanks in Articles 4 and 6, to be settled at once by mutual agreement."

#### " MEMORANDUM.

30 " Details of Agreement between the Delegates of the Government of the Dominion, and the Directors of the Hudson's Bay Company.

" 1. It is understood that, in surrendering to Her Majesty all the rights, &c., of the Company in any part of British North America not comprised in Rupert's Land, Canada or British Columbia, the Company are to retain the posts they actually occupy in the North West Territory.

" 2. It is understood that it will be a sufficient act of selection under Article III, that the Company should, within twelve months, name the number of acres which they will require adjoining each post. The Actual survey to be proceeded with, with all convenient speed.

40 " 3. It is understood that in the Red River Settlement, the size of the blocks to be retained round Upper Fort Garry shall not exceed (10) acres; and that round Lower Fort Garry shall not exceed (300) acres.

" 4. It is understood that a list of the stations round which the Company will require blocks of land, with the size of the blocks they will require, shall be made out forthwith, and communicated to the Canadian Ministers.

" 5. It is understood that Article V. shall be construed to mean that the blocks shall front the river or road, by which means of access are provided,

Documents.

No. 19.  
Resolutions  
of Canadian  
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28th May  
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tinued.

and shall be approximately in the form of parallelograms, of which the frontage shall not be more than half the depth.

"6. It is understood that the Company may defer the exercise of their right of claiming their proportion of each township for not more than ten years after it is set out; but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it.

"7. It is understood that the blank in Article 6 shall be filled up with 8 cents (Canadian).

"8. It is understood that any claims of Indians to compensation for lands required for the purposes of settlement shall be disposed of by the Canadian Government, in communication with the Imperial Government, and that the Company shall be relieved of all responsibility in respect of them.

(Signed) "STAFFORD H. NORTHCOTE.  
"G. E. CARTIER.  
"W. MACDOUGALL."

"March 22, 1869.

"Memorandum of a further Agreement between Sir Geo. Et. Cartier and Sir Stafford Northcote.

"Inasmuch as the northern branch of the Saskatchewan River is the Northern boundary of the Fertile Belt, and therefore any land on the northern bank is not within the territory of which the Company are to have one-twentieth part, it is understood that, in forming the townships abutting on the northern bank, the Company shall be at liberty to take their one-twentieth of any such townships, giving up to the Canadian Dominion an equal quantity of the portion of lands coming to them of townships established on the southern bank.

"It is understood that the townships on the northern bank shall not for the above purpose extend more than five miles inland from the river.

"It is understood that, in laying out any public roads, canals, &c., through any block of land reserved to the Company, the Canadian Government may take, without compensation, such land as is necessary for the purpose, not exceeding one-twenty-fifth of the total acreage of the block; but if the Canadian Government require any land which is actually under cultivation, or which has been built upon or which is necessary for giving the Company's servants access to any river or lake, or as a frontage to any river or lake, they shall pay the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.

"It is understood that the whole of the land to be appropriated within the meaning of the last preceding clause shall be appropriated for public purposes.

(Signed) "GEO. ET. CARTIER.  
"STAFFORD NORTHCOTE.

"London, March 29, 1869."



Resolved,—That this House learns with satisfaction, by letter from the Under-Secretary of State for the Colonies, of 9th March last, that, in fulfilment of the expectations held out in Mr. Cardwell's despatch of 17th June, 1865, Her Majesty's Government will be prepared to propose to Parliament that the Imperial guarantee be given to a loan of £300,000, the amount of which is proposed to be paid over by Canada on the transfer of the Company's rights.

Documents.

No. 19.  
Resolutions  
of Canadian  
Parliament,  
28th May  
1869—con-  
tinued.

Resolved,—That the Senate will be ready to concur with the House of Commons in an Address to Her Majesty, that she will be graciously pleased, by and with the advice of Her Most Honourable Privy Council, under the 146th clause of "The British North America Act, 1867," and the provisions of the Imperial Act, 31 & 32 Vict., cap. 105, to unite Rupert's Land on the terms and conditions expressed in the foregoing Resolutions, and also to unite the North-Western Territory with the Dominion of Canada, as prayed for by, and on the terms and conditions contained in the joint Address of the Senate and the House of Commons of Canada, adopted during the first session of the first Parliament of Canada, and hereinbefore referred to.

Resolved,—That upon the transference of the territories in question to the Canadian Government, it will be the duty of the Government to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer.

Resolved,—That the Governor in Council be authorized and empowered to arrange any details that may be necessary to carry out the terms and conditions of the above agreement.

## No. 20.

### Address to Her Majesty the Queen.

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign,

WE, your Majesty's most dutiful and loyal subjects, the Senate and Commons of the Dominion of Canada in Parliament assembled, humbly approach your Majesty for the purpose of representing :—

That, during the first session of the first Parliament of this Dominion, we adopted an Address to your Majesty, praying that your Majesty would be graciously pleased, by and with the advice of your Majesty's Most Honorable Privy Council, under the provisions of the 146th section of "The British North America Act, 1867," and on the terms specified in that Address to unite Rupert's Land and the North-West Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their

No. 20...  
Address to  
Her Majesty  
the Queen,  
29th and  
31st May,  
1869.

Documents. future welfare and good government, and assuring your Majesty of the willingness of the Parliament of Canada to assume the duties and obligations of Government and legislation as regards those territories.

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No. 20.  
Address to  
Her Majesty  
the Queen,  
29th and  
31st May  
1869—con-  
tinued.

That our joint Address was duly laid at the foot of the Throne, and that your Majesty, by despatch from the Right Honorable the Secretary of State for the Colonies to the Governor General of Canada, under date of the 23rd April, 1868, signified your Majesty's willingness to comply with the prayer of the said Address, but that your Majesty was advised that the requisite powers of government and legislation could not, consistently with the existing charter of the Hudson's Bay Company, be transferred to Canada without an Act of Parliament, which Act was subsequently passed by the Imperial Parliament, and received your Majesty's Assent on the 31st July, 1868. 10

That by a despatch dated 8th August, 1868, from the Honorable the Secretary of State for the Colonies, the Governor-General was informed that in pursuance of the powers conferred by the Act for the Surrender of the Hudson's Bay territories to your Majesty he proposed to enter into negotiations with the Company as to the terms of such surrender, whereupon under authority of an Order of the Governor General in Council, of the 1st October, 1868, the Honorable Sir George Et. Cartier, Baronet, and the Honorable William MacDougall, C.B., were appointed a delegation to England to arrange the terms for the acquisition by Canada of Rupert's Land, and by another Order in Council of the same date, were authorized to arrange for the admission of the North-West Territory into union with Canada either with or without Rupert's Land, as might be found practicable and expedient. 20

That the delegates proceeded on their mission to England, and entered into negotiations with His Grace the Duke of Buckingham and Chandos, then Secretary of State for the Colonies, and afterwards with the Right Honorable Earl Granville, his successor in office, for the acquisition by Canada of the territorial and other rights claimed by the Hudson's Bay Company in Rupert's Land, and in any other part of British North America not comprised in Rupert's Land, Canada or British Columbia, on the terms conditionally agreed to on behalf of the Government of Canada by the Honorable Sir George Et. Cartier, Baronet, and the Honourable William MacDougall, C.B., and on behalf of the Hudson's Bay Company by Sir Stafford H. Northcote, Governor of that Company, and approved by His Excellency in Council as aforesaid, which terms are set forth in a letter from Sir Frederic Rogers, Under-Secretary of State for the Colonies, of the 9th March, 1869, communicated to the delegates by direction of Earl Granville, and in two subsequent Memorandums dated respectively 22nd and 29th March, 1869, containing a modification of such terms, and are in the words and figures following : 30 40

“ Terms, as stated in the Letter from Sir Frederic Rogers of 9th March, 1869.”

(These terms as set forth supra are here recited at length.)

“ MEMORANDUM.

“ Details of Agreement between the Delegates of the Government of the Dominion and the Directors of the Hudson’s Bay Company.”

(This memorandum as set forth supra is here recited at length.)

“ Memorandum of a further Agreement between Sir Geo. Et. Cartier and Sir Stafford Northcote.”

(This memorandum, also above set forth, is here recited at length.)

That we learn with satisfaction by letter from the Under-Secretary of State for the Colonies, of the 9th March last, that, in fulfilment of the  
 10 expectations held out in Mr. Cardwell’s despatch of the 17th of June, 1865, your Majesty’s Government will be prepared to propose to Parliament that the Imperial guarantee be given to a loan of £300,000 the amount which is proposed to be paid over by Canada on the transfer of the Company’s rights.

That upon the transference of the territories in question to the Canadian Government it will be our duty to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer, and we authorize and empower the Governor in Council to arrange any details that may be necessary to carry out  
 20 the terms and conditions of the above agreement.

We therefore most humbly pray that your Majesty will be graciously pleased, by and with the advice of your Most Honorable Privy Council, under the 146th clause of “ The British North America Act, 1867,” and the provisions of the Imperial Act, 31 and 32 Vict., cap. 105, to unite Rupert’s Land on the terms and conditions expressed in the foregoing resolutions and also to unite the North-Western Territory with the Dominion of Canada as prayed for by and on the terms and conditions contained in our joint Address adopted during the first session of the first Parliament of this Dominion, and hereinbefore referred to.

30

The Senate, Monday, May 31, 1869.

(Signed) JOSEPH CAUCHON, Speaker.

House of Commons, Ottawa, May 29, 1869.

(Signed) JAMES COCKBURN, Speaker.

Documents.

No. 20.

Address to  
 Her Majesty  
 the Queen,  
 29th and  
 31st May  
 1869—con-  
 tinued.



Documents.

## No. 21.

**Deed of Surrender: The Hudson's Bay Company to Her Majesty Queen Victoria.***(Schedule "C," referred to in Document No. 22.)*

No. 21.  
Deed of  
Surrender,  
the Hud-  
son's Bay  
Company to  
H.M. the  
Queen,  
19th Nov-  
ember 1869.

To all whom these presents shall come unto, or concern, the Governor and Company of Adventurers of England, trading into Hudson's Bay, send greeting :

WHEREAS the said Governor and Company were established and incorporated by their said name of "The Governor and Company of Adventurers of England, trading into Hudson's Bay," by Letters Patent granted by His late Majesty King Charles the Second in the twenty second 10 year of his reign, whereby His said Majesty granted unto the said company, and their successors the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks and sounds in whatsoever latitude they should be, that lay within the entrance of the straits commonly called Hudson's Straits, together with all the lands and territories upon the countries, coasts and confines of the seas, bays, lakes, rivers, creeks, and sounds aforesaid that were not already actually possessed by, or granted to, any of His Majesty's subjects, or possessed by the subjects of any other Christian Prince or State, and that the said land should be from thence 20 forth reckoned and reputed as one of His Majesty's Plantations or Colonies in America, called Rupert's Land; and whereby His said Majesty made and constituted the said Governor and Company and their successors the absolute lords and proprietors of the same territory, limits and places aforesaid and of all other the premises saving the faith, allegiance, and sovereign dominion due to His said Majesty, his heirs and successors for the same; and granted to the said Governor and Company and their successors such rights of Government and other rights, privileges, and liberties, franchises powers and authorities in Rupert's Land as therein expressed. And 30 whereas ever since the date of the said Letters Patent, the said Governor and Company have exercised and enjoyed the sole right thereby granted of such trade and commerce as therein mentioned and have exercised 30 and enjoyed other rights, privileges, liberties, franchises, powers and authorities thereby granted, and the said Governor and Company may have exercised or assumed rights of Government in other parts of British North America not forming part of Rupert's Land, or of Canada or of British Columbia. And whereas by "The British North America Act, 1867," it is (amongst other things) enacted that it shall be lawful for Her present Majesty Queen Victoria, by and with the advice and consent of Her Majesty's most Honourable Privy Council, on address from the Houses of Parliament of Canada to admit Rupert's Land and the 40 North-Western Territory or either of them into the Union of the Dominion of Canada on such terms and conditions as are in the Address expressed, and as Her Majesty thinks fit to approve, subject to the provisions of the said Act. And whereas by the "Rupert's Land Act, 1868," it is enacted (amongst other things) that for the purposes of that Act the term "Rupert's Land" shall include the whole of the lands

and territories held or claimed to be held by the Governor and Company and that it shall be competent for the said Governor and Company to surrender to Her Majesty, and for Her Majesty, by any instrument under Her Sign Manual and Signet to accept a surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers and authorities whatsoever, granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, upon such terms and conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company; provided,

10 however, that such surrender shall not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land shall be admitted into the said Dominion of Canada shall have been approved of by Her Majesty, and embodied in an Address to Her Majesty from the Houses of Parliament of Canada in pursuance of the 146th section of "The British North America Act, 1867," and that upon the acceptance by Her Majesty of such surrender, all rights of Government and proprietary rights, and all other privileges, liberties, franchises, powers and authorities whatsoever, granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, and

20 which shall have been so surrendered, shall be absolutely extinguished, provided that nothing in the said Act contained shall prevent the said Governor and Company from continuing to carry on in Rupert's Land or elsewhere trade and commerce. And whereas Her said Majesty Queen Victoria and the said Governor and Company have agreed to terms and conditions upon which the said Governor and Company shall surrender to Her said Majesty, pursuant to the provisions in that behalf in the "Rupert's Land Act, 1868," contained, all the rights of Government and other rights, privileges, liberties, franchises, powers and authorities, and all the lands and territories (except and subject as in the said terms

30 and conditions expressed or mentioned) granted or purported to be granted by the said Letters Patent, and also all similar rights which have been exercised or assumed by the said Governor and Company in any parts of British North America not forming part of Rupert's Land, or of Canada, or of British Columbia, in order and to the intent that, after such surrender has been effected and accepted under the provisions of the last mentioned Act, the said Rupert's Land may be admitted into the Union of the Dominion of Canada, pursuant to the hereinbefore mentioned Acts or one of them. And whereas the said terms and conditions on which it has been agreed that the said surrender is to be made by the

40 said Governor and Company (who are in the following articles designated as the Company) to Her said Majesty are as follows (that is to say):—

1. The Canadian Government shall pay to the Company the sum of £300,000 sterling when Rupert's Land is transferred to the Dominion of Canada.

2. The Company to retain all the posts or stations now actually possessed and occupied by them or their officers or agents whether in Rupert's Land or any other part of British North America, and may

Documents.

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No. 21.  
Deed of  
Surrender,  
the Hud-  
son's Bay  
Company to  
H.M. the  
Queen,  
19th Nov-  
ember 1869  
—continued.

Documents.

No. 21.  
Deed of  
Surrender,  
the Hud-  
son's Bay  
Company to  
H.M. the  
Queen,  
19th Nov-  
ember 1869  
—continued.

within twelve months after the acceptance of the said surrender select a block of land adjoining each of their posts or stations, within any part of British North America not comprised in Canada and British Columbia in conformity, except as regards the Red River Territory, with a list made out by the Company and communicated to the Canadian Ministers, being the list in the annexed schedule. The actual survey is to be proceeded with, with all convenient speed.

3. The size of each block is not to exceed in the Red River Territory an amount to be agreed upon between the Company and the Governor of Canada in Council.

10

4. So far as the configuration of the country admits, the blocks shall front the river or road by which means of access are provided, and shall be approximately in the shape of parallelograms, and of which the frontage shall not be more than half the depth.

5. The Company may, at any time within fifty years after such acceptance of the said surrender, claim in any township or district within the fertile belt in which land is set out for settlements, grants of land not exceeding one-twentieth part of the land so set out; the blocks so granted to be determined by lot, and the Company to pay a rateable share of the survey expenses, not exceeding 8 cents Canadian an acre. The Company may defer the exercise of their rights of claiming their porportion of each township or district for not more than ten years after it is set out, but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it.

20

6. For the purpose of the last article the fertile belt is to be bounded as follows:—On the south by the United States boundary; on the west by the Rocky Mountains; on the north by the Northern Branch of the Saskatchewan River; on the east by Lake Winnipeg, the Lake of the Woods and the waters connecting them.

7. If any township shall be formed abutting on the north bank of the northern branch of the Saskatchewan River, the Company may take their one-twentieth of any such township, which, for the purpose of this article, shall not extend more than five miles inland from the river, giving to the Canadian Dominion an equal quantity of the portion of land coming to them of townships established on the southern bank of the said river.

30

8. In laying out any public roads, canals or other public works, through any block of land reserved to the Company, the Canadian Government may take without compensation such land as is necessary for the purpose, not exceeding one-twenty-fifth of the total acreage of the block; but if the Canadian Government require any land which is actually under cultivation, which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, or as a frontage to any river or lake, the said Government shall pay to the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.

40



9. It is understood that the whole of the land to be appropriated within the meaning of the last preceding clause, shall be appropriated for public purposes.

10. All titles to land up to the eighth day of March, one thousand eight hundred and sixty-nine, conferred by the Company, are to be confirmed.

11. The Company is to be at liberty to carry on its trade without hindrance in its corporate capacity; and no exceptional tax is to be placed on the Company's land, trade or servants, nor any import duty on goods introduced by the said Company previously to such acceptance of the said surrender.

12. Canada is to take over the materials of the electric telegraph at cost price; such price including transport, but not including interest for money, and subject to a deduction for ascertained deterioration.

13. The Company's claim to land under an agreement of Messrs. Vankoughnet and Hopkins is to be withdrawn.

14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the Company shall be relieved of all responsibility in respect of them.

And whereas the surrender hereinafter contained is intended to be made in pursuance of the agreement, and upon the terms and conditions hereinbefore stated;

Now know ye, and these presents witness, that, in pursuance of the powers and provisions of the "Rupert's Land Act, 1868," and on the terms and conditions aforesaid, and also on condition of this surrender being accepted pursuant to the provisions of that Act, the said Governor and Company do hereby surrender to the Queen's Most Gracious Majesty, all the rights of Government, and other rights, privileges, liberties, franchises, powers and authorities, granted or purported to be granted to the said Governor and Company by the said recited Letters Patent of His Late Majesty King Charles the Second, and also all similar rights which may have been exercised or assumed by the said Governor and Company in any parts of British North America, not forming part of Rupert's Land or of Canada, or of British Columbia, and all the lands and territories within Rupert's Land (except and subject as in the said terms and conditions mentioned) granted or purported to be granted to the said Governor and Company by the said Letters Patent. In witness whereof the Governor and Company of Adventurers of England trading into Hudson's Bay have hereunto caused their Common Seal to be affixed, the nineteenth day of November, One thousand eight hundred and sixty-nine.

Documents.

No. 21.  
Deed of  
Surrender,  
the Hud-  
son's Bay  
Company to  
H.M. the  
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Documents.

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Surrender,  
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Company to  
H.M. the  
Queen,  
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## THE SCHEDULE ABOVE REFERRED TO.

*Northern Department, Rupert's Land.*

District.	Post.	Acres of Land.	
English River	Isle de la Crosse.....	50	
	Rapid River.....	5	
	Portage la Loche.....	20	say 10 acres each end of portage
	Green Lake.....	100	
	Cold Lake.....	10	
	Deer's Lake.....	5	
	—————	190	acres in English River (Dist.) 10

Saskatchewan	Edmonton House.....	3000	
	Rocky Mountain House	500	
	Fort Victoria.....	3000	
	St. Paul.....	3000	
	Fort Pitt.....	3000	
	Battle River.....	3000	
	Carlton House.....	3000	
	Fort Albert.....	3000	20
	Whitefish Lake.....	500	
	Lac La Biche.....	1000	
	Fort Assiniboine.....	50	
	Lesser Slave Lake.....	500	
	Lac St. Anne.....	500	
	Lac La Nonne.....	500	
	St. Albert.....	1000	
	Pigeon Lake.....	100	
	Old White Mud Fort...	50	
	—————	25700	acres in Sas- 30 katchewan District.

Cumberland	Cumberland House....	100	
	Fort La Cocue.....	3000	
	Pelican Lake.....	50	
	Moose Woods.....	1000	
	The Pas.....	25	
	Moose Lake.....	50	
	Grand Rapid Portage.	100	50 acres at each end of portage.
	—————	4325	acres in Cumber- 40 land District.

*Northern Department, Rupert's Land—Continued.*

Documents.

District.	Post.	Acres of Land.	No. 21.
Swan River	Fort Pelly.....	3000	Deed of Surrender, the Hud- son's Bay Company to H.M. the Queen, 19th Nov- ember 1869 —continued.
	Fort Ellice.....	3000	
	Q'Appelle Lakes.....	2500	
	Touchwood Hills.....	500	
	Shoal River.....	50	
	Manitobah.....	50	
	Fairford.....	100	
10	—————9200 acres in Swan River District.		
Red River	Upper Fort Garry and Town of Winnipeg...		Such number of acres as may be agreed upon between the Company and the Governor of Canada in Council.
	Lower Fort Garry (in- cluding the farm the Company now have under cultivation)....		
	White Horse Plain.....		
20			
Manitobah Lake Portage la Prairie	Oak Point.....	50	
	.....	1000	
	—————1050.		
Lake La Pluie	Fort Alexander.....	500	
	Fort Frances.....	500	
	Eagle's Nest.....	20	
	Big Island.....	20	
	Lac du Bonnet.....	20	
	Rat Portage.....	50	
	Shoal Lake.....	20	
	Lake of the Woods....	50	
	Whitefish Lake.....	20	
	English River.....	20	
	Hungry Hall.....	20	
	Trout Lake.....	20	
	Clearwater Lake.....	20	
30	Sandy Point.....	20	
40	—————1300 acres in Lac La Pluie District.		



## Documents.

*Northern Department, Rupert's Land—Concluded*

No. 21.	District.	Post.	Acres of Land.	
Deed of Surrender, the Hudson's Bay Company to H.M. the Queen, 19th November 1869 —continued.	York	York Factory.....	100	
		Churchill.....	10	
		Severn.....	10	
		Trout Lake.....	10	
		Oxford.....	100	
		Jackson's Bay.....	10	
		God's Lake.....	10	
		Island Lake.....	10	10
			—————260	

Norway House	Norway House.....	100	
	Berens' River.....	25	
	Grand Rapid.....	10	
	Nelson's River.....	10	
		—————145	

Total in Northern Department..... 42170 acres.

*Southern Department, Rupert's Land.*

Albany	Albany Factory.....	100	
	Martin's Falls.....	10	20
	Osnaburg.....	25	
	Lac Seul.....	500	
		—————635	

East Main	Little Whale River.....	50	
	Great Whale River.....	50	
	Fort George.....	25	
		—————125	

Moose	Moose Factory.....	100	
	Hannah Bay....	10	
	Abitibi.....	10	40
	New Brunswick.....	25	
		—————145	

*Southern Department, Rupert's Land—Concluded*

Documents.

District.	Post.	Acres of Land.
10	Rupert's House.....	50
	Mistassing.....	10
	Temiskamay.....	10
	Woswonaby.....	10
	Mechiskun.....	10
	Pike Lake.....	10
	Nitchequou.....	10
	Kamapiscan.....	10
		————— 120
Kinogumissee	Matawagamique.....	50
	Kuckatoosh.....	10
		————— 60
Total in Southern Department.....		1085 acres.

No. 21.  
Deed of  
Surrender,  
the Hud-  
son's Bay  
Company to  
H.M. the  
Queen,  
19th Nov-  
ember 1869  
—continued.

*Montreal Department, Rupert's Land.*

Superior Temiscaminque	Long Lake.....	10
	Kakababeagino.....	10
		————— 20
20 Labrador	Fort Nascopie.....	75
	Outposts, ditto.....	25
	Fort Chimo (Ungava)..	100
	South River Outposts	30
	George's River.....	50
	Whale River.....	50
	North's River.....	25
	False River.....	25
		————— 380
Total in Montreal Department.....		400 acres.

*Northern Department, North West Territory.*

30 Athabasca	Fort Chippewyan.....	10
	Fort Vermilion.....	500
	Fort Dunvegan.....	50
	Fort St. John's.....	20
	Forks of Athabasca	
	River.....	10
	Battle River.....	5
	Fond du Lac.....	5
	Salt River.....	5
40		————— 605 acres in Athabasca District.

Documents.

*Northern Department, North West Territory—Concluded.*

No. 21.	District.	Post.	Acres of Land.	
Deed of Surrender, the Hud- son's Bay Company to H.M. the Queen, 19th Nov- ember 1869 — <i>continued.</i>	McKenzie's River	Fort Simpson.....	100	
		Fort Liard.....	300	
		Fort Nelson.....	200	
		The Rapids.....	100	
		Hay River.....	20	
		Fort Resolution.....	20	
		Fort Rae.....	10	
		Fond du Lac.....	10	10
		Fort Norman.....	10	
		Fort Good Hope.....	10	
		Peel's River.....	10	
		Lapierre's House.....	10	
		Fort Halkett.....	100	
			900 acres in McKen- zie's R. Dist.	
Total in North West Territory.....			1505 acres.	

<i>Recapitulation.</i>				Acres	
Northern Department, Rupert's Land.....				42170	20
Southern           "           "           " .....				1085	
Montreal         "           "           " .....				400	
Northern Department, Northwest Territory				1505	
				45160	

No. 22.  
Order in  
Council  
admitting  
Rupert's  
Land and  
the North-  
Western  
Territory  
into the  
Union,  
23rd June  
1870.

No. 22.

Order in Council admitting Rupert's Land and the North-Western Territory into  
the Union.

At the Court at Windsor, the 23rd day of June, 1870.

Present :

The QUEEN'S Most Excellent Majesty,  
Lord President,  
Lord Privy Seal,  
Lord Chamberlain,  
Mr. Gladstone.

30

WHEREAS by the "British North America Act, 1867," it was  
(amongst other things) enacted that it should be lawful for the Queen,  
by and with the advice of Her Majesty's Most Honourable Privy Council,



on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-Western Territory, or either of them, into the Union on such terms and conditions in each case as should be in the Addresses expressed, and as the Queen should think fit to approve, subject to the provisions of the said Act. And it was further enacted that the provisions of any Order in Council in that behalf should have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland :

Documents.

—  
No. 22.  
Order in  
Council  
admitting  
Rupert's  
Land and  
the North-  
Western  
Territory  
into the  
Union,  
23rd June  
1870—con-  
tinued.

\* Record,  
p. 84.

And whereas by an Address from the Houses of the Parliament of  
10 Canada, of which address a copy is contained in the Schedule to this  
Order annexed, marked A,\* Her Majesty was prayed, by and with the  
advice of Her Most Honourable Privy Council, to unite Rupert's Land  
and the North-Western Territory with the Dominion of Canada, and to  
grant to the Parliament of Canada authority to legislate for their future  
welfare and good government upon the terms and conditions therein  
stated :

And whereas by the "Rupert's Land Act, 1868," it was (amongst  
other things) enacted that it should be competent for the Governor and  
Company of Adventurers of England trading into Hudson's Bay (herein-  
20 after called the Company) to surrender to Her Majesty, and for Her  
Majesty, by any Instrument under Her Sign Manual and Signet to accept  
a surrender of all or any of the lands, territories, rights, privileges, liberties,  
franchises, powers, and authorities whatsoever, granted or purported to  
be granted by certain Letters Patent therein recited to the said Company  
within Rupert's Land upon such terms and conditions as should be agreed  
upon by and between Her Majesty and the said Company; provided,  
however, that such surrender should not be accepted by Her Majesty  
until the terms and conditions upon which Rupert's Land should be  
admitted into the said Dominion of Canada should have been approved  
30 of by Her Majesty and embodied in an Address to Her Majesty from  
both Houses of the Parliament of Canada, in pursuance of the 146th  
Section of the "British North America Act, 1867" :

And it was by the same Act further enacted that it should be  
competent to Her Majesty, by Order or Orders in Council, on Addresses  
from the Houses of the Parliament of Canada, to declare that Rupert's  
Land should, from a date to be therein mentioned, be admitted into and  
become part of the Dominion of Canada :

And whereas a second Address from both the Houses of the Parliament  
of Canada has been received by Her Majesty praying that Her Majesty  
40 will be pleased, under the provisions of the hereinbefore recited Acts,  
to unite Rupert's Land on the terms and conditions expressed in certain  
Resolutions therein referred to and approved of by Her Majesty of which  
said Resolutions and Address copies are contained in the Schedule to  
this Order annexed, marked B,† and also to unite the North-Western  
Territory with the Dominion of Canada, as prayed for by and on the  
terms and conditions contained in the hereinbefore first recited Address,  
and also approved of by Her Majesty :

† Record,  
p. 87.

Documents.

No. 22.  
Order in  
Council  
admitting  
Rupert's  
Land and  
the North-  
Western  
Territory  
into the  
Union,  
23rd June  
1870—con-  
tinued.

And whereas a draft surrender has been submitted to the Governor General of Canada containing stipulations to the following effect, viz. :—

1. The sum of £300,000 (being the sum hereinafter mentioned) shall be paid by the Canadian Government into the Bank of England to the credit of the Company within six calendar months after acceptance of the surrender aforesaid with interest on the said sum at the rate of 5 per cent per annum, computed from the date of such acceptance until the time of such payment.

2. The size of the blocks which the Company are to select adjoining each of their forts in the Red River limits, shall be as follows :—

	Acres
Upper Fort Garry and town of Winnipeg, including the enclosed park around shop and ground at the entrance of the town - - - - -	500
Lower Fort Garry (including the farm the Company now have under cultivation) - - - - -	500
White Horse Plain - - - - -	500

3. The deduction to be made as hereinafter mentioned from the price of the materials of the Electric Telegraph, in respect of deterioration thereof, is to be certified within three calendar months from such acceptance as aforesaid by the agents of the Company in charge of the depots where the materials are stored. And the said price is to be paid by the Canadian Government into the Bank of England to the credit of the Company within six calendar months of such acceptance, with interest at the rate of 5 per cent per annum on the amount of such price, computed from the date of such acceptance until the time of payment :

And whereas the said draft was on the fifth day of July, one thousand eight hundred and sixty-nine, approved by the said Governor General in accordance with a Report from the Committee of the Queen's Privy Council for Canada; but it was not expedient that the said stipulations, not being contained in the aforesaid second Address, should be included in the surrender by the said Company to Her Majesty of their rights aforesaid or in this Order in Council :

And whereas the said Company did by deed under the seal of the said Company, and bearing date the nineteenth day of November, one thousand eight hundred and sixty-nine, of which deed a copy is contained in the Schedule to this Order annexed, marked C,\* surrender to Her Majesty all the rights of government, and other rights, privileges, liberties, franchises, powers and authorities granted, or purported to be granted to the said Company by the said Letters Patent herein and hereinbefore referred to, and also all similar rights which may have been exercised or assumed by the said Company in any parts of British North America not forming part of Rupert's Land, or of Canada or of British Columbia and all the lands and territories (except and subject as in the terms and conditions therein mentioned) granted or purported to be granted to the said Company by the said Letters Patent :

\* Record,  
p. 94.

And whereas such surrender has been duly accepted by Her Majesty by an instrument under Her Sign Manual and Signet, bearing date at Windsor the twenty-second day of June, one thousand eight hundred and seventy :

It is hereby Ordered and declared by Her Majesty, by and with the advice of the Privy Council, in pursuance and exercise of the powers vested in Her Majesty by the said Acts of Parliament that from and after the fifteenth day of July, one thousand eight hundred and seventy, the said North-Western Territory shall be admitted into and become part of the Dominion of Canada upon the terms and conditions set forth in the first hereinbefore recited Address, and that the Parliament of Canada shall from the day aforesaid have full power and authority to legislate for the future welfare and good government of the said Territory. And it is further ordered that, without prejudice to any obligations arising from the aforesaid approved Report, Rupert's Land shall from and after the said date be admitted into and become part of the Dominion of Canada upon the following terms and conditions, being the terms and conditions still remaining and to be performed of those embodied in the said second address of the Parliament of Canada, and approved of by Her Majesty as aforesaid :—

1. Canada is to pay to the Company £300,000 when Rupert's Land is transferred to the Dominion of Canada.

2. The Company are to retain the posts they actually occupy in the North-Western Territory, and may, within twelve months of the surrender, select a block of land adjoining each of its posts within any part of British North America not comprised in Canada and British Columbia, in conformity, except as regards the Red River Territory, with a list made out by the Company and communicated to the Canadian Ministers, being the list in the Schedule of the aforesaid Deed of Surrender. The actual survey is to be proceeded with, with all convenient speed.

3. The size of each block is not to exceed (10) acres round Upper Fort Garry, (300) acres round Lower Fort Garry; in the rest of the Red River Territory a number of acres to be settled at once between the Governor in Council and the Company, but so that the aggregate extent of the blocks is not to exceed 50,000 acres.

4. So far as the configuration of the country admits, the blocks shall front the river or road by which means of access are provided, and shall be approximately in the shape of parallelograms, of which the frontage shall not be more than half the depth.

5. The Company may, for fifty years after the surrender, claim in any township or district within the Fertile Belt, in which land is set out for settlement, grants of land not exceeding one-twentieth part of the land so set out. The blocks so granted to be determined by lot, and the Company to pay a rateable share of the survey expenses, not exceeding 8 cents Canadian an acre. The Company may defer the exercise of their right of claiming the proportion of each township for not more than ten years after it is set out; but their claim must be limited to an

Documents.

—  
No. 22.  
Order in  
Council  
admitting  
Rupert's  
Land and  
the North-  
Western  
Territory  
into the  
Union,  
23rd June  
1870—con-  
tinued.



Documents. allotment from the lands remaining unsold at the time they declare their intention to make it.

No. 22.  
Order in  
Council  
admitting  
Rupert's  
Land and  
the North-  
Western  
Territory  
into the  
Union,  
23rd June  
1870—con-  
tinued.

6. For the purpose of the last Article, the Fertile Belt is to be bounded as follows :—On the south by the United States boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods and the waters connecting them.

7. If any township shall be formed abutting on the north bank of the northern branch of the Saskatchewan River, the Company may take their one-twentieth of any such township, which for the purpose of this Article shall not extend more than five miles inland from the river, giving to the Canadian Dominion an equal quantity of the portion of lands coming to them of townships established on the southern bank. 10

8. In laying out any public roads, canals, etc., through any block of land reserved to the Company, the Canadian Government may take, without compensation, such land as is necessary for the purpose, not exceeding one twenty-fifth of the total acreage of the block; but if the Canadian Government require any land which is actually under cultivation, or which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, or as a frontage to any river or lake, they shall pay to the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants. 20

9. It is understood that the whole of the land to be appropriated within the meaning of the last preceding clause shall be appropriated for public purposes.

10. All titles to land up to the eighth day of March, one thousand eight hundred and sixty-nine, conferred by the Company are to be confirmed.

11. The Company is to be at liberty to carry on its trade without hindrance in its corporate capacity, and no exceptional tax is to be placed on the Company's land, trade or servants, nor any import duties on goods introduced by them previous to the surrender. 30

12. Canada is to take over the materials of the electric telegraph at cost price—such price including transport, but not including interest for money, and subject to a deduction for ascertained deterioration.

13. The Company's claim to land under agreements of Messrs. Vankoughnet and Hopkins is to be withdrawn.

14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the Company shall be relieved of all responsibility in respect of them. 40

15. The Governor in Council is authorized and empowered to arrange any details that may be necessary to carry out the above terms and conditions.

And the Right Honourable Earl Granville, one of Her Majesty's principal Secretaries of State, is to give the necessary directions herein accordingly.

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## No. 23.

Order in Council relating to reconveyance of Hudson's Bay Company's Selected Lands  
Within the Fertile Belt.

(Schedule "D," referred to in No. 2.)

P.C. 1169.

Certified copy of a Report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 6th December, 1872.

Documents.

No. 23.  
Order in  
Council  
relating to  
reconvey-  
ance of  
Hudson's  
Bay Com-  
pany's se-  
lected lands  
within the  
Fertile Belt,  
6th Dec-  
ember 1872.

On a letter dated 3rd December, 1872, from the Hon. Donald A. Smith, Chief Commissioner of the Hudson's Bay Company, acknowledging the receipt of the Surveyor General's letter dated the 28th ultimo informing him of the action of the Honourable the Privy Council in disposing of certain points raised in his letter of the 21st ultimo respecting the Hudson's Bay Company's land rights in certain portions of the territory within the Fertile Belt, and stating that his third enquiry must have been misunderstood as the closing paragraph of the Surveyor General's letter can hardly be considered as replying to it, inasmuch as it does not say (what it is his wish to elicit) that the Government will accept a reconveyance from the Company of such lands as they may not desire to retain.

Mr. Smith requests that this point may be reconsidered and that the Government will give a favourable reply.

The Hon. the Secretary of State in a Report dated 4th December, 1872, states that he sees no objection to the Hudson's Bay Company reconveying to the Government any lands which may fall to them under the operation of the Dominion Lands Act, provided that such reconveyance is made without any equivalent therefor and within Twelve months from the time when the title to such lands may have become vested in the Company, and he therefore recommends that the Order in Council of the 28th ultimo be amended accordingly.

The Committee submit the above recommendation for Your Excellency's approval.

(Sgd.) RODOLPHE BOUDREAU,

*Clerk of the Privy Council.*

Documents.

## No. 24.

No. 24.  
Minute of  
Resolution  
of Hudson's  
Bay Com-  
pany  
approving  
proposal set  
forth in  
Order in  
Council of  
6th Dec-  
ember 1872,  
7th January  
1873.

**Minute of Resolution of Hudson's Bay Co. Approving Proposal Set Forth in Order  
in Council of 6th December, 1872.**

*(Schedule "E," referred to in No. 2.)*

**EXTRACT FROM THE MINUTES OF A MEETING HELD ON  
TUESDAY, JANUARY 7TH, 1873.**

Read copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General of Canada December 1872, stating that there is no objection to the Hudson's Bay Company reconveying to the Government any lands which may fall to them under the operation of the Dominion Lands Act, provided that such reconveyance is made without any equivalent therefor, and within twelve months from the time when the title to such lands may have been vested in the Company. 10

RESOLVED that the said Dominion Lands Act and this Order in Council be taken and substituted for the provisions contained in the Deed of Surrender of Ruperts Land in all matters relating to the Company's one twentieth of the lands within the Fertile Belt.

This Agreement shall not however be considered as waiving to any extent whatever the right of the Company to their proportion of any and all lands which may have been or may hereafter be reserved by the Government for Indians. 20

## No. 25.

No. 25.  
Notification  
to Hudson's  
Bay Com-  
pany of  
Surveys of  
Townships  
within the  
Fertile Belt,  
and con-  
firmation  
thereof,  
30th June  
1881.

**Notification to Hudson's Bay Co. of Surveys of Townships Within the Fertile Belt,  
and Confirmation Thereof.**

*(Schedule "F," referred to in No. 2.)*

COPY—H  
GR

File 153149 No. 2.  
30th June, 1881.

Sir,—

I have the honour, by direction of the Acting Minister of the Interior, pursuant to the provisions of Sec. 21 of the Dominion Lands Act of 1879, 30



to notify through you the Governor of the Honourable Hudson's Bay Company that the Townships set forth in the schedule herewith, of to-day's date, have been surveyed and the respective surveys thereof confirmed.

I have the honour to be,

Sir,

Your obedient servant,

(Sgd.) LINDSAY RUSSELL,

*Surveyor General.*

C. J. BRYDGES, Esq.,  
Land Commissioner,  
Hudson's Bay Co.,  
Montreal, Que.

10

COPY.

Schedule of certain whole Townships in the North West Territory the surveys of which have been confirmed—

To accompany the notification to the Hudson's Bay Company dated 30th June, 1881.

No. of Range West of 1st Mer.		Township	No. of Range West of 2nd Mer.		Township.
20	18	9	1	25, 26	
	19	10	2	25, 26	
	20	10	3	25, 26	
	22	4	4	25, 26	
	25	1, 2	13	27, 29, 30	
	26	1, 2, 21	14	28, 29, 30	
	27	3, 4, 13, 14, 16, 21, 22	15	27, 28, 29, 30	
	28	13, 14, 15, 21, 22	16	27, 28	
	29	14, 21, 22, 27, 28			
	30	14, 21, 22, 27, 28			
	32	21			

30

(Sgd ) LINDSAY RUSSELL,

*Surveyor General.*

Department of the Interior,  
Dominion Lands Office,  
Ottawa, 30th June, 1881.

Documents.

No. 25.  
Notification  
to Hudson's  
Bay Com-  
pany of  
Surveys of  
Townships  
within the  
Fertile Belt,  
and con-  
firmation  
thereof,  
30th June  
1881—con-  
tinued.

Documents.

No. 26.

No. 26.  
Letters  
Patent  
granting to  
Hudson's  
Bay Com-  
pany lands  
adjoining  
posts as  
reserved by  
Deed of  
Surrender,  
27th Janu-  
ary 1882.

**Letters Patent Granting to Hudson's Bay Company Lands Adjoining Posts as Reserved by Deed of Surrender.**

*(Schedule "C," referred to in No. 2.)*

(SEAL)

(Sgd.)

J. O. CÔTÉ,

Deputy Governor.

CANADA.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c., &c.

To ALL TO WHOM these Presents shall come,

10

GREETING.

WHEREAS by "The Ruperts Land Act 1868," (Imperial) power was given for the Governor and Company of Adventurers of England trading into Hudson's Bay, (hereinafter called "the Company,") to surrender and for Her Majesty to accept a surrender of all the lands rights, franchises, &c., of the Company within Ruperts Land for the purpose of having Ruperts Land admitted into the Dominion of Canada.

AND whereas such surrender has been duly made and accepted.

(Sgd.)

A. POWER,  
for the  
Deputy of  
the Minister  
of Justice,  
Canada.

AND whereas by one of the terms and conditions of the surrender the said Company were to retain all the Posts or Stations then actually possessed and occupied by them, their Officers or Agents whether in Ruperts Land or any other part of British North America, and might, subject to certain provisions within twelve months after the acceptance of the said Surrender, select a block of land adjoining each of their Posts or Stations within any part of British North America not comprised in Canada and British Columbia.

20

AND whereas the North West Territory and Ruperts Land have been duly admitted into and now form part of Our Dominion of Canada.

AND whereas the block of land to be retained by the Company adjoining the Post or Station hereinafter mentioned has been duly selected, surveyed and set out, and it is expedient that Letters Patent granting to the Company such block of land should be issued.

30

NOW KNOW YE that in pursuance and in consideration of the premises, WE, by these Presents, Do grant, convey and assure unto the said THE GOVERNOR and COMPANY OF ADVENTURERS of ENGLAND trading into Hudson's Bay, their successors and assigns the parcel or tract of land following, that is to say :

ALL and singular that parcel or tract of land situate lying and being in the Province of Manitoba, in our Dominion of Canada, and being composed of the Reserve at Fairford Mission, and being more particularly described as follows that is to say—commencing at a Poplar post marked HB, planted on the most southerly bank of the Fairford River at the north-east angle of the Reserve hereby described,—thence due south fifty three

40

chains and ninety two links to a Poplar post marked HB,—thence due west twenty chains to a Poplar post marked HB,—thence due north six chains and ten links to a Poplar post marked HB planted on the most southerly bank of the Fairford River,—thence in a northerly direction following the said bank of the said river to the place of beginning, containing by admeasurement One hundred acres, more or less, and being the block of land surveyed and set out adjoining the Post or Station of the Company, known as FAIRFORD MISSION.

10 TO HAVE AND TO HOLD the said land hereby granted, conveyed and assured unto the said The Governor and Company of Adventurers of England Trading into Hudson's Bay their successors and assigns for ever.

SAVING excepting and reserving nevertheless unto Us Our heirs and successors the free use passage and enjoyment of in over and upon all navigable waters that shall or may be hereafter found on or under or be flowing through or upon any part of the parcel or tract of land hereby granted.

20 PROVIDED, however, and these presents are issued subject to the condition that in laying out any public roads canals or other public works through the block of land hereby granted, the Government of Our Dominion of Canada may take without compensation such land as is necessary for the purpose not exceeding one twenty fifth of the total acreage of the block, but if Our said Government require any land which is actually under cultivation, which has been built upon, or which is necessary for giving the Company's servants access to any River or Lake, or as a frontage to any River or Lake, our said Government shall pay to the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.

30

Ref : No. 11754.  
Reg : No. 11868.  
Grant No. 39.

GIVEN under the Great Seal of Canada. WITNESS  
Joseph Olivier Côté, Esquire, Deputy of Our Right  
Trusty and Well-beloved Councillor Sir John Douglas  
Sutherland Campbell, (commonly called THE MAR-  
QUIS of LORNE,) Knight of Our Most Ancient and  
Most Noble Order of the Thistle, Knight Grand Cross  
of Our Most Distinguished Order of Saint Michael and  
Saint George, GOVERNOR GENERAL of CANADA,  
and Vice Admiral of the same.

AT Ottawa, this twenty seventh day of January, in the year of Our Lord, one thousand eight hundred and eighty two, and in the forty fifth year of Our Reign.

40

BY COMMAND,

(Sgd.) LINDSAY RUSSELL,  
*Deputy of the Minister of the Interior.*

" HB "

(Sgd.)

EDOUARD K. LANGEVIN

*Under Secretary of State.*

Documents.

No. 26.

Letters  
Patent  
granting to  
Hudson's  
Bay Com-  
pany lands  
adjoining  
posts as  
reserved by  
Deed of  
Surrender,  
27th Janu-  
ary 1882—  
*continued.*



Documents.

No. 27.

No. 27.  
Letters  
Patent  
issued to  
Hudson's  
Bay Com-  
pany for  
lands in  
Fractional  
Townships  
within the  
Fertile Belt,  
7th July  
1910.

**Letters Patent Issued to Hudson's Bay Co. for Lands in Fractional Townships Within the Fertile Belt.**

*(Schedule "G," referred to in No. 2.)*

C. J. JONES,  
Deputy Governor.

CANADA.

(SEAL)

GEORGE THE FIFTH, by the Grace of God, of the  
United Kingdom of Great Britain and Ireland and of  
the British Dominions beyond the Seas, King, Defender  
of the Faith, Emperor of India.

10

To all to whom these Presents shall come, GREETING :—

WHEREAS in pursuance of the Fifth Article of the terms and conditions of a certain Deed of Surrender from the Governor and Company of Adventurers of England trading into Hudson's Bay (hereinafter called "The Company") to Us, bearing date the Nineteenth day of November one Thousand eight hundred and sixty nine and of the provisions in that behalf contained in the Act 7-8 Edward VII, Chapter 20 the lands hereinafter described have been allotted to the Company as its one-twentieth of the Fractional Township in which the said lands are situated.

NOW KNOW YE that in consideration of the premises, and in pursuance 20  
of the said Act, We do by these presents grant unto the Company, its successors and assigns all those parcels or tracts of land, situate, lying and being in the Province of Saskatchewan, in Our Dominion of Canada, and being composed of

FIRSTLY :—The South Half and the North West quarter of Section Twenty-six, in Township Twenty-nine, in Range thirty, West of the Principal Meridian, containing by admeasurement Four Hundred and Eighty (480) acres more or less.

SECONDLY :—The whole of Fractional Section Eight, in Township Thirty-five, in Range Thirty-two, West of the Principal Meridian, as shown 30  
upon a map or plan of survey of the said thirty-fifth Township in the Thirty-second Range approved and confirmed at Ottawa, on the 24th day of February, A.D. 1906, by Edouard Deville, Surveyor General of Dominion Lands and of record in the Department of the Interior, containing by admeasurement Four Hundred and sixty-four and thirty hundredths (464-30/100) acres more or less, and also the East half of Section Twenty-six of the said Township containing by admeasurement Three Hundred and Twenty (320) acres more or less and

THIRDLY :—The whole of Section Eight in Township Thirty-seven, in Range One West of the Second Meridian containing by admeasurement Six Hundred and Forty (640) acres more or less and also the North West quarter of Section Twenty-six of the said Township containing by admeasurement One Hundred and Sixty (160) acres more or less. The lands hereby granted containing by admeasurement together Two thousand and sixty-four and thirty hundredths (2064 30/100) acres more or less.

To HAVE AND TO HOLD the said parcels or tracts of land hereby granted unto the Company its successors and assigns forever :—

10 SAVING EXCEPTING AND RESERVING, nevertheless, unto Us, our successors and assigns, the free uses, passage and enjoyment of, in, over and upon all navigable waters that now are or may be hereafter found on, or under, or flowing through or upon any part of the said parcels or tracts of land; also reserving thereout and therefrom all rights of Fishery and Fishing and occupation in connection therewith upon, around and adjacent to the said lands and also the privilege of landing from and mooring boats and vessels upon any part of the said lands and using the said lands in connection with the rights of Fishery and Fishing hereby reserved, so far as may be reasonably necessary to the exercise of such rights.

20 PROVIDED, however, that in laying out any Public roads, canals or other public works through any of the said lands hereby granted, the Canadian Government may take, without compensation, such land as is necessary for the purpose, not exceeding one-twenty-fifth of the total acreage of any parcel of the said lands; but if the Canadian Government require for such purposes any land which is actually under cultivation, which has been built upon or which is necessary for giving the Company's servants access to any river or lake, or as a frontage to any river or lake, the said Government shall pay to the Company the fair value of the same, and shall make compensation for any injury done to the Company or its  
30 servants.

PROVIDED that the whole of the land to be appropriated within the meaning of the last preceding paragraph shall be appropriated for public purposes.

Fiat No. 203406

40 H.B. Co's. Grant  
No. 404.

GIVEN under the Great Seal of Canada :—WITNESS, Charles Jerome Jones, Esquire, a Companion of Our Imperial Service Order, Deputy of Our Right Trusty and Right Well Beloved Cousin and Councillor, the Right Honorable Sir Albert Henry George, Earl Grey, Viscount Howick, Baron Grey of Howick, in the County of Northumberland, in the Peerage of the United Kingdom, and a Baronet, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of Our Royal Victorian Order, etc., etc., Governor General and Commander-in-Chief of Our Dominion of Canada.

Documents.

—  
No. 27.  
Letters  
Patent  
issued to  
Hudson's  
Bay Com-  
pany for  
lands in  
Fractional  
Townships  
within the  
Fertile Belt,  
7th July  
1910—con-  
tinued.

Documents. BY COMMAND.

No. 27.  
Letters  
Patent  
issued to  
Hudson's  
Bay Com-  
pany for  
lands in  
Fractional  
Townships  
within the  
Fertile Belt,  
7th July  
1910—con-  
tinued.

AT OTTAWA this Seventh day of July in the year of our Lord One Thousand Nine Hundred and ten and in the first year of our Reign.

(Sgd.) J. A. CÔTÉ,

*Assistant Deputy of the Minister of the Interior.*

(Sgd.)

P. Lewin,

Assistant Under Secretary of State.

Recorded in the Department of the Interior, the 15 July, 1910.

Liber 393, Folio 389.

(Signed) N. O. Côté,

Registrar of Dominion Lands Patents.

10

No. 28.  
Letters  
Patent  
granting to  
Hudson's  
Bay Com-  
pany cer-  
tain lands  
in lieu of  
other lands  
within  
Fertile Belt  
re-conveyed  
to Crown,  
10th May  
1913.

No. 28.

**Letters Patent Granting to Hudson's Bay Company Certain Lands in Lieu of Other Lands Within Fertile Belt Re-conveyed to Crown.**

*(Schedule "H," referred to in No. 2.)*

C. J. Jones,  
*Deputy Governor.*

CANADA

{ GEORGE THE FIFTH, by the Grace  
of God of the United Kingdom of Great  
Britain and Ireland and of the British  
Dominions beyond the Seas, King, De-  
fender of the Faith, Emperor of India.

20

To all to whom these presents shall come: GREETING:

WHEREAS the Governor and Company of Adventurers of England Trading into Hudson's Bay, (hereinafter called "the Company") are under the terms and conditions of a certain Deed of Surrender from the Company to Us, entitled to one-twentieth of the lands surveyed into Townships, in a certain portion of Our North West Territories of Canada described and designated as the Fertile Belt.

30

AND WHEREAS it is, in and by the Act of the Parliament of Canada, called and known as the "Dominion Lands Act" amongst other things in effect enacted that on the Survey of a Township, (in which the Company's lands are situated) being effected, should the Sections allotted to the Company, or any of them, or any portion of them, be found to have been bona fide settled on under the authority of any Order in Council or of the said Act, then if the Company forego their right to the Section settled upon as aforesaid, or any one or more of such sections, they shall have the right to select a quantity of land equal to that so settled on, and in lieu thereof from any lands then unoccupied.

40



AND WHEREAS the Company being entitled by grants from Us and by the provisions of the said Act, among other lands, to certain lands equal in quantity to the lands hereafter described and hereby conveyed, and the lands to which they were so entitled, having been found on survey settled upon either under the authority of an Order in Council, or of the said Act, the Company have surrendered the said lands to Us.

AND WHEREAS the Company have selected the lands hereinafter described and hereby conveyed and which are equal in quantity to those so settled upon and surrendered as aforesaid in lieu of those so surrendered.

10 NOW KNOW YE that by these presents We do grant unto the Company, its successors and assigns forever all those parcels or Tracts of Land, situate, lying and being in the Thirteenth Township in the Twenty-eighth Range West of the Second Meridian in the Province of Saskatchewan, in Our Dominion of Canada, and being composed of the South half of Section Two and the North-East quarter of section sixteen both of the said township containing by admeasurement together Four Hundred and Eighty acres more or less.

TO HAVE AND TO HOLD the said Parcels or Tracts of Land unto the said the Company its successors and assigns forever.

20 Saving and excepting nevertheless unto Us, Our Successors and Assigns, the free uses, passage and enjoyment, of, in, over and upon all navigable waters that now are or may be hereafter found on or under, or flowing through or upon any part of the said Parcels or Tracts of Land; and also reserving thereout and therefrom all rights of fishery and fishing and occupation in connection therewith upon, around and adjacent to the said lands, and also the privilege of landing from and mooring boats and vessels upon any part of the said lands; and using the said lands in connection with the rights of fishery and fishing hereby reserved, so far as may be reasonably necessary to the exercise of such rights.

30 PROVIDED however that in laying out any Public Roads, Canals or other Public Works through any of the lands hereby granted the Canadian Government may take, without compensation, such land as is necessary for the purpose not exceeding one-twenty-fifth of the total acreage of any parcel of the said lands; but if the Canadian Government require for such purpose any land which is actually under cultivation, which has been built upon or which is necessary for giving the Company's servants access to any river or lake, or as frontage to any river or lake the said Government shall pay to the Company the fair value of the same and shall make compensation for any injury done to the Company or its servants.

40 PROVIDED that the whole of the land to be appropriated within the meaning of the last preceding paragraph shall be appropriated for public purposes.

GIVEN under the Great Seal of Canada:—Witness Charles Jerome Jones, Esquire, a Companion of Our Imperial Service Order, Deputy of Our Most Dear and Entirely Beloved Uncle and Most Faithful Counsellor,

Documents.  
No. 28.  
Letters  
Patent  
granting  
Hudson's  
Bay Com-  
pany cer-  
tain lands  
in lieu of  
other lands  
within  
Fertile Belt  
re-conveyed  
to Crown,  
10th May  
1913—con-  
tinued.

Documents. Field Marshal His Royal Highness Prince Arthur William Patrick Albert, Duke of Connaught and of Strathearn, Earl of Sussex (in the Peerage of the United Kingdom) Prince of the United Kingdom of Great Britain and Ireland, Duke of Saxony, Prince of Saxe-Coburg and Gotha; Knight of Our Most Noble Order of the Garter; Knight of Our Most Ancient and Most Noble Order of the Thistle; Knight of Our Most Illustrious Order of Saint Patrick, One of Our Most Honourable Privy Council; Great Master and Principal Knight of the Grand Cross of Our Most Honourable Order of the Bath; Knight Grand Commander of Our Most Exalted Order of the Star of India; Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George; Knight Grand Commander of Our Most Eminent Order of the Indian Empire; Knight Grand Cross of our Royal Victoria Order; Our Personal Aide-de-Camp, Governor General and Commander-in-chief of Our Dominion of Canada. 10

No. 28.  
Letters Patent granting to Hudson's Bay Company certain lands in lieu of other lands within Fertile Belt reconveyed to Crown, 10th May 1913—continued.

Fiat No. 267693

Hudson's Bay Company's  
Grant No. 519

{ AT OTTAWA, this Tenth day of May, in  
the year of our Lord one thousand nine  
hundred and thirteen and in the Fourth  
year of Our Reign.

BY COMMAND.

(Sgd.) N. O. CÔTÉ,

for Deputy of the Minister of the Interior. 20

(Sgd.) B. PERNTIN,

*Assistant Under Secretary of State.*

Recorded in the Department of the Interior the 13 May 1913.

Liber 502, Folio 350.

(Sgd.) WM. S. GLIDDON,

*Deputy Registrar of Dominion Lands Patents.*

I certify that the within Instrument was duly entered and Registered in the Land Titles Office for the Moose Jaw Land Registration District at Moose Jaw in the Province of Saskatchewan at 2.57 o'clock P.M. on the 20 day of May A.D. 1913, Number P. 1952 Book P., Fol. 85. 30

(Sgd.) P. F. HARDING,

*Dy. Registrar M.J.L.R.D.*

I certify the within to be a true and correct Copy of Instrument No. P. 1952 registered in the Land Titles Office for the Moose Jaw Land Registration District at Moose Jaw, at 2.57 o'clock P.M. on the 20 day of May 1913.

Dated at Moose Jaw at 10.00 o'clock A.M. this 16 day of Oct. 1923.

(Sgd.) A. W. HAIGH,

*Registrar M.J.L.R.D.*

(Seal Moose Jaw Land Registration District),

40

## APPENDIX OF STATUTES.

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Appendix of  
Statutes.

No. 29.

Excerpts  
from British  
North  
America  
Act, 1867,  
29th March  
1867.

### No. 29.

**Excerpts from British North America Act, 1867 (30 Victoria, Chapter 3).**

An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for purposes connected therewith.

WHEREAS the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom :

10 AND WHEREAS such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire :

AND WHEREAS on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared :

AND WHEREAS it is expedient that Provision be made for the eventual admission into the Union of other Parts of British North America :

20 Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :

1. This Act may be cited as The British North America Act, 1867.

.....

109. All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest  
30 other than that of the Province in the same.

.....

146. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of Canada to admit Rupert's Land and the



Appendix of  
Statutes.

No. 29.  
Excerpts  
from British  
North  
America  
Act, 1867,  
29th March,  
1867—con-  
tinued.

No. 30.  
Excerpts  
from the  
Manitoba  
Act, 1870,  
12th May  
1870.

North-Western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act; and the Provisions of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

### No. 30.

#### Excerpts from the Manitoba Act, 1870 (33 Victoria, Chapter 3 (Canada)).

An Act to amend and continue the Act 32 and 33 Victoria, chapter 3; and to establish and provide for the Government of the Province of 10  
Manitoba.

(Assented to 12th May, 1870)

WHEREAS it is probable that Her Majesty the Queen may, pursuant to the British North America Act, 1867, be pleased to admit Rupert's Land and the North-Western Territory into the Union or Dominion of Canada, before the next Session of the Parliament of Canada :

AND WHEREAS it is expedient to prepare for the transfer of the said Territories to the Government of Canada at the time appointed by the Queen for such admission :

AND WHEREAS it is expedient also to provide for the organization 20  
of part of the said Territories as a Province, and for the establishment of a Government therefor and to make provision for the Civil Government of the remaining part of the said Territories, not included within the limits of the Province :

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :

1. On, from and after the day upon which the Queen, by and with the advice and consent of Her Majesty's Most Honourable Privy Council, under the authority of the 146th Section of the British North America Act, 1867, shall, by Order in Council in that behalf, admit Rupert's Land 30  
and the North-Western Territory into the Union or Dominion of Canada, there shall be formed out of the same a Province, which shall be one of the Provinces of the Dominion of Canada, and which shall be called the Province of Manitoba, and be bounded as follows : that is to say, commencing at the point where the meridian of ninety-six degrees west longitude from Greenwich intersects the parallel of forty-nine degrees north latitude,—thence due west along the said parallel of forty-nine degrees north latitude (which forms a portion of the boundary line between the United States of America and the said North-Western Territory) to the meridian of ninety-nine degrees of west longitude, 40

—thence due north along the said meridian of ninety-nine degrees west longitude, to the intersection of the same with the parallel of fifty degrees and thirty minutes north latitude,—thence due east along the said parallel of fifty degrees and thirty minutes north latitude to its intersection with the beforementioned meridian of ninety-six degrees west longitude,—thence due south along the said meridian of ninety-six degrees west longitude to the place of beginning.

Appendix of  
Statutes.

No. 30.  
Excerpts  
from the  
Manitoba  
Act, 1870,  
12th May  
1870—con-  
tinued.

2. On, from and after the said day on which the Order of the Queen in Council shall take effect as aforesaid, the provisions of the British North America Act, 1867, shall, except those parts thereof which are in terms made, or, by reasonable intendment, may be held to be specially applicable to, or only to affect one or more, but not the whole of the Provinces now composing the Dominion, and except so far as the same may be varied by this Act, be applicable to the Province of Manitoba, in the same way, and to the like extent as they apply to the several Provinces of Canada, and as if the Province of Manitoba had been one of the Provinces originally united by the said Act.

30. All ungranted or waste lands in the Province shall be, from and after the date of the said transfer, vested in the Crown, and administered by the Government of Canada for the purposes of the Dominion, subject to, and except and so far as the same may be affected by, the conditions and stipulations contained in the agreement for the surrender of Rupert's Land by the Hudson's Bay Company to Her Majesty.

31. And whereas, it is expedient, towards the extinguishment of the Indian Title to the lands in the Province, to appropriate a portion of such ungranted lands, to the extent of one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents, it is hereby enacted that, under regulations to be from time to time made by the Governor General in Council, the Lieutenant-Governor shall select such lots or tracts in such parts of the Province as he may deem expedient, to the extent aforesaid, and divide the same among the children of the half-breed heads of families residing in the Province at the time of the said transfer to Canada, and the same shall be granted to the said children respectively, in such mode and on such conditions as to settlement and otherwise as the Governor General in Council may from time to time determine.

32. For the quieting of titles, and assuring to the settlers in the Province the peaceable possession of the lands now held by them, it is enacted as follows :—

40 1. All grants of land in freehold made by the Hudson's Bay Company up to the eighth day of March, in the year 1869, shall, if required by the owner, be confirmed by grant from the Crown.

Appendix of  
Statutes.

No. 30.  
Excerpts  
from the  
Manitoba  
Act, 1870,  
12th May  
1870—con-  
tinued.

2. All grants of estates less than freehold in land made by the Hudson's Bay Company up to the eighth day of March aforesaid, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

3. All titles by occupancy with the sanction and under the license and authority of the Hudson's Bay Company up to the eighth day of March aforesaid, of land in that part of the Province in which the Indian Title has been extinguished, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

4. All persons in peaceable possession of tracts of land at the time of the transfer to Canada, in those parts of the Province in which the Indian Title has not been extinguished, shall have the right of pre-emption of the same, on such terms and conditions as may be determined by the Governor in Council. 10

5. The Lieutenant-Governor is hereby authorized, under regulations to be made from time to time by the Governor General in Council, to make all such provisions for ascertaining and adjusting, on fair and equitable terms, the rights of Common, and rights of cutting hay held and enjoyed by the settlers in the Province, and for the commutation of the same by grants of land from the Crown. 20

33. The Governor General in Council shall from time to time settle and appoint the mode and form of Grants of Land from the Crown, and any Order in Council for that purpose when published in the Canada Gazette, shall have the same force and effect as if it were a portion of this Act.

34. Nothing in this Act shall in any way prejudice or affect the rights or properties of the Hudson's Bay Company, as contained in the conditions under which that Company surrendered Rupert's Land to Her Majesty.

35. And with respect to such portion of Rupert's Land and the North-Western Territory, as is not included in the Province of Manitoba, it is hereby enacted, that the Lieutenant-Governor of the said Province shall be appointed, by Commission under the Great Seal of Canada, to be the Lieutenant-Governor of the same, under the name of the North-West Territories, and subject to the provisions of the Act in the next section mentioned. 30

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## No. 31.

An Act Respecting the Public Lands of the Dominion (35 Vict. (1872),  
Chap. 23).

(Assented to 14th April, 1872.)

Appendix of  
Statutes.No. 31.  
An Act  
respecting  
the Public  
Lands of the  
Dominion,  
14th April  
1872.

WHEREAS it is expedient with a view to the proper and efficient administration and management of certain of the public lands of the Dominion that the same should be regulated by statute: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada,

10 enacts as follows :—

## PRELIMINARY—INTERPRETATION.

1. This Act shall apply exclusively to the Lands included in Manitoba and the North-West Territories, which lands shall be styled and known as *Dominion Lands*; and this Act shall be known and may be cited as the "*Dominion Lands Act*," and the following terms and expressions therein shall be held to have the meaning hereinafter assigned them, unless such meaning be repugnant to the subject or inconsistent with the context; that is to say:

20 1. The term *Secretary of State*, means the Secretary of State of Canada. "Secretary of State."

2. The term *Surveyor-General* means the said officer, or in his absence the chief clerk performing his duties for the time being. "Surveyor-General."

3. The term *Agent* or *Officer* means any person or Officer employed in connection with the administration and management, sale or settlement of Dominion lands; and the term *Local Agent* means the Agent for Dominion lands employed as aforesaid, with respect to the lands in question; and the term *Land Office* means the office of any such Agent. "Agent," "Officer."

4. The term *Deputy Surveyor* means a Surveyor duly authorized under the provisions of this Act to survey Dominion lands. "Deputy Surveyor."

5. The term *Crown Timber Agent* means the local officer appointed to collect dues and to perform such other duties as may be assigned to such officer, in respect to the timber on Dominion Lands. "Crown Timber Agent."

6. The term *Island*, as used in connection with timber, means an isolated grove or clump of timber in Prairie. "Island."

40 7. The term *Belt*, as used in connection with timber, means a strip of timber along the shore of a lake, river or water course. "Belt."

8. The term *Clause* means a section of this Act distinguished by a separate number, and the term *Sub-Clause* means a sub-division of any clause distinguished by a separate number in smaller type. "Clause." "Sub-Clause."

Appendix of "Canada  
Statutes. Gazette."

No. 31.  
An Act  
respecting  
the Public  
Lands of the  
Dominion,  
14th April  
1872—con-  
tinued.

Administration  
and manage-  
ment of Do-  
minion Lands.  
Office.

Copies of  
Documents.

Employees  
not to pur-  
chase.

System of  
Survey.

Townships to  
contain  
thirty-six  
square miles,  
exclusive of  
road allow-  
ance.

Sections.

9. The term *Canada Gazette* means the official Gazette of the Government, published at Ottawa.

#### DOMINION LANDS OFFICE.

2. The Department of the Secretary of State of Canada, shall be charged with the administration and management of the Dominion lands.

1. Such administration and management shall be effected through a Branch of the said Department, to be known and designated as "*The Dominion Lands Office*."

2. Copies of any records, documents, plans, books, or papers, belonging to or deposited in the said office, attested under the signature of the Secretary of State or of the Surveyor General, shall be competent evidence in all cases in which the original records, documents, books, plans, or papers, could be evidence.

3. No person employed in or under the Dominion Lands Office shall purchase any of such lands, except under authority of an Order in Council.

#### SYSTEM OF SURVEY.

3. Subject always to the provisions hereinafter made with respect to special cases,—

1. The Dominion lands shall be laid off in quadrilateral Townships, containing thirty-six sections of one mile square in each (except in the case of those sections rendered irregular by the convergence or divergence of meridians as hereinafter mentioned), together with road allowances of one chain and fifty links in width, between all townships and sections.

2. The sections shall be bounded and numbered as shewn by the following diagram :

N.

	31	32	33	34	35	36	
	30	29	28	27	26	25	
	19	20	21	22	23	24	
W.	18	17	16	15	14	13	E.
	7	8	9	10	11	12	
	6	5	4	3	2	1	

S.

10

20

30

3. The township therefore will, subject to deficiency or surplus from converging or diverging meridians, as the case may be, measure on each side, from centre to centre of the road allowances bounding the same, four hundred and eighty-nine chains; Provided that the Governor in Council may hereafter, should the same be deemed expedient, reduce the width of the road allowances on township and section lines in that part of the territory lying north of the line between townships eighteen and nineteen, and east of the tenth range east of the principal meridian, and west of the fourteenth range west of the said meridian.

Townships to Appendix of  
measure on Statutes.  
each side  
489 chains. No. 31.  
An Act  
Proviso: as to respecting  
reduction of the Public  
width of road Lands of the  
allowances, in Dominion,  
certain places. 14th April  
1872—con-  
tinued.

4. The lines bounding townships on the east and west sides shall in all cases be true meridians, and those on the north and south sides shall be chords intersecting circles of latitude passing through the angles of the townships.

Lines  
bounding  
townships.

5. The townships shall be numbered in regular order northerly from the international boundary or forty-ninth parallel of latitude, and shall lie in ranges numbered, in Manitoba, east and west from a certain meridian line run in the year 1869, styled the "Principal Meridian," drawn northerly from the said forty-ninth parallel at a point ten miles or thereabouts westerly from Pembina.

Townships  
shall be  
numbered.

6. In the territories east and west of Manitoba such other governing or guide meridians may be adopted and confirmed by the Governor in Council as may from time to time become expedient.

Other govern-  
ing or guide  
meridians.

7. The townships shall be laid out the precise width of four hundred and eighty-nine chains, as aforesaid, on the base lines hereinafter mentioned, and the meridians between townships shall be drawn from such bases, north or south to the depth of two townships, that is to say, to the correction lines hereinafter mentioned.

Townships to  
be 489 chains  
wide on the  
base lines.

8. The said forty-ninth parallel or international boundary shall be the first base line, or that for townships one and two. The second base line shall be between townships four and five, the third between townships eight and nine, the fourth between townships twelve and thirteen, the fifth between townships sixteen and seventeen, and so on northerly in regular succession.

Base lines for  
townships.

9. The correction lines, or those upon which the "jog" resulting from want of parallelism of meridians shall be allowed, will be as follows, that is to say:—On the line between townships two and three, on that between six and seven, on that between ten and eleven, and so on. In other words, they will be those township lines running east and west which are equi-distant from the bases, at the depth of two townships.

Correction  
lines, what  
township  
lines to be.



Appendix of Division of  
Statutes. sections.

No. 31.

An Act  
respecting  
the Public  
Lands of the  
Dominion,  
14th April  
1872—con-  
tinued.

Dimensions and  
area of irregular  
quarter sections,  
how to be re-  
turned.

Country to be  
laid out into  
blocks of four  
townships each  
in the first in-  
stance, and how.

Corners.

Posts and  
monuments.

Proviso as to  
correction  
lines.

Surveys to be  
performed by  
contract.

10. Each section shall be divided into quarter sections of one hundred and sixty acres, more or less, subject to the provisions hereinafter made.

11. In the survey of any and every township, the deficiency or surplus, as the case may be, resulting from convergence or divergence of meridians shall be allowed in the range of quarter sections adjoining the west boundary of the township, and the north and south error in closing on the correction lines from the north or south shall be allowed in the ranges of quarter sections adjoining and north or south respectively of the said correction lines. 10

12. The dimensions and area of the irregular quarter sections resulting from the provision in the next preceding clause, whether the same be deficient or in excess, shall, in all cases, be returned by the surveyor at their actual measurements and contents.

13. Preliminary to the subdivision into townships and sections of any given portion of country proposed to be laid out for settlement, the same shall be laid out into blocks of four townships each, by projecting the base and correction lines, and east and west meridian boundaries of each block : 20

1. On these lines, at the time of the survey, all township, section and quarter section corners shall be marked, which corners shall govern, respectively, in the subsequent subdivision of the block.

2. Only a single row of posts or monuments to indicate the corners of townships, or sections, (except as hereinafter provided), shall be placed on any survey line. These posts or monuments as an invariable rule (with the exception above referred to) shall be placed in the west limit of the road allowances, on north and south lines, and in the south limit of road allowances, on east and west lines; and in all cases shall fix and govern the position of the boundary corner between the two adjoining townships, sections, or quarter sections on the opposite side of the road allowance. 30

3. Provided that in the case of the township, section and quarter section corners on correction lines, posts or monuments shall in all cases be planted and marked independently for the townships on either side; those for the townships north of the line, in the north limit of the road allowance; and those for the townships south, in the south limit. 40

14. The surveys of the Dominion lands, according to the system above described, shall be carried out and shall be performed by contract at a certain rate per mile or per acre, fixed from time to time by the Governor in Council.

15. Legal subdivisions as applicable to the survey, sale and granting of the Dominion lands, shall be as follows: and it shall be sufficient that such legal subdivisions be severally, as the case may require, designated and described by such names or numbers and areas for letters patent, that is to say:

1. A section or 640 acres;  
     A half section or 320 acres;  
     A quarter section or 160 acres;  
     A half quarter section or 80 acres.

- 10 2. To facilitate the descriptions for Letters Patent of less than a half quarter section, the quarter sections composing every section in accordance with the boundaries of the same as planted or placed in the original survey, shall be supposed to be divided into quarter quarter sections, or forty acres, and such quarter quarter sections shall be numbered as shewn in the following diagram:

N.

	13	14	15	16	
	12	11	10	9	
W.	5	6	7	8	E.
	4	3	2	1	

S.

3. The area of any legal subdivision as above set forth, in Letters Patent, shall be held to be more or less, and shall in each case be represented by the exact quantity as given to such subdivision in the original survey:

16. Provided that nothing in this Act shall be construed to prevent the lands upon the Red and Assiniboine Rivers surrendered by the Indians to the late Earl of Selkirk from being laid out in such manner as may be necessary in order to carry out section thirty-two of the Act thirty-third Victoria, chapter three or to prevent fractional sections or lands bordering on any river, lake, or other water course or public road, from being divided; or such lands from being laid out in lots of any certain frontage and depth, in such manner as may appear desirable; or to prevent the subdivision of sections or other legal subdivisions into wood lots as hereinafter provided; or from describing the said lands upon the Red and Assiniboine Rivers, or such subdivisions of fractional sections, or other lots,

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the laying out  
and descrip-  
tion of lands  
in certain  
localities.

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Preamble.

Preamble.

Preamble.

Certain sections  
and parts of  
sections in cer-  
tain townships  
to be known as  
Hudson's Bay  
Company's  
lands.

In certain  
townships the  
Company's  
one-twentieth  
to be set  
apart by lot.

Company may  
select land in

or wood lots, for patent, by numbers according to a plan of record, or by metes and bounds, or by both, as may seem expedient.

## DISPOSAL OF THE DOMINION LANDS.

### LANDS RESERVED BY THE HUDSON'S BAY COMPANY.

**17.** Whereas by article five of the terms and conditions in the deed of surrender from the Hudson's Bay Company to the Crown, the said Company is entitled to one-twentieth of the lands surveyed into townships in a certain portion of the territory surrendered, described and designated as the "Fertile Belt": 10

And whereas by the terms of the said deed, the right to claim the said one-twentieth is extended over the period of fifty years, and it is provided that the lands comprising the same shall be determined by lot; and whereas the said Company and the Government of the Dominion have mutually agreed that with a view to an equitable distribution throughout the territory described, of the said one-twentieth of the lands, and in order further to simplify the setting apart thereof, certain sections or parts of sections, alike in numbers and position in each township throughout the said territory, shall, as the townships are surveyed, be set apart and designated to meet and cover such one-twentieth: 20

And whereas it is found by computation that the said one-twentieth will be exactly met, by allotting in every fifth township two whole sections of six hundred and forty acres each, and in all other townships one section and three quarters of a section each, therefore—

In every fifth township in the said territory; that is to say: in those townships numbered 5, 10, 15, 20, 25, 30, 35, 40, 45, 50, and so on in regular succession northerly from the international boundary, the whole of sections Nos. 8 and 26, and in each and every of the other townships the whole of section No. 8, and the south half and north-west quarter of section 26 (except in the cases hereinafter provided for) shall be known and designated as the lands of the said Company. 30

**18.** Provided, that the next preceding clause shall not apply to fractional townships or those broken by lakes, but only to whole townships, and that in the cases above mentioned the Company's one-twentieth shall be set apart by lot, by the Secretary of State and the said Company, or some person duly authorized by them respectively. 40

**19.** Provided further, that on the survey of a township being effected, should the sections so allotted, or any of them,



or any portion of them, be found to have been *bona fide* settled on under the authority of any Order in Council, or of this Act, then if the Company forgo their right to the sections settled upon as aforesaid, or any one or more of such sections, they shall have the right to select a quantity of land equal to that so settled on, and in lieu thereof, from any lands then unoccupied.

lieu of allotted Appendix of  
land found to Statutes.  
be settled  
upon under No. 31.  
lawful autho- An Act  
rity. respecting  
the Public  
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tinued.

20 20. Provided also, as regards the sections and parts of sections as mentioned in clause seventeen, that where the same may be situate in any township withdrawn from settlement and sale, and held as timber lands under the provisions hereinafter contained, the same shall form no part of the timber limit or limits included in such townships, but shall be held to be the property of the Company.

Company's  
lands to form  
no part of  
timber limits.

20 21. As townships are surveyed and the respective surveys thereof confirmed, or as townships or parts of townships are set apart and reserved from sale as timber lands, the Governor of the said Company shall be duly notified thereof by the Surveyor-General, and thereupon this Act shall operate to pass the title in fee simple in the sections or three-quarter parts of sections to which the Company will be entitled under clause seventeen, as aforesaid, and to vest the same in the said Company, without requiring a patent to issue for such lands; and as regards the lands set apart by lot, and those selected to satisfy the one-twentieth in townships other than the above, as provided in clauses eighteen and nineteen, returns thereof shall be made in due course by the Local Agent or Agents to the Dominion Lands Office, and patents shall issue for the same accordingly.

Title to lands  
to pass to  
Company  
without  
Patent in  
certain cases,  
and under  
patents in  
other cases.

#### EDUCATIONAL ENDOWMENT.

30 22. And whereas it is expedient to make provision in aid of education in Manitoba, and the North-West Territories, therefore sections eleven and twenty-nine in each and every surveyed township throughout the extent of the Dominion lands, shall be and are hereby set apart as an endowment for purposes of education.

Sections 11 and  
29 in every sur-  
veyed township  
set apart as an  
educational  
endowment.

40 1. The sections so dedicated shall be thereafter dealt with in such manner as may be prescribed by law, and the same are hereby withdrawn from the operation of the clauses in this Act relating to purchase by private entry, and to homestead right, and it is hereby declared that no such right of purchase by private entry or homestead right shall be recognised in connection with the said sections or any part or parts thereof:

Such sections  
not to be sub-  
ject to right  
of purchase by  
private entry  
or pre-emp-  
tion or home-  
stead right.

2. Provided, that on a township being surveyed, should such sections, or either of them, or any part of either, be found to have been settled on and improved, then and in such case the occupant or occupants, conforming to the requirements

Proviso: if  
such sections  
are found  
settled on and  
improved.

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of this Act shall be confirmed in such possession, and the Secretary of State shall select a quantity equal to that found to have been so settled on from the unclaimed lands in such township, and shall withdraw the land so selected from sale and settlement, and shall set apart and publish the same as school lands, by notice in the *Canada Gazette*.

#### MILITARY BOUNTY LAND CLAIMS.

Warrants to  
be granted for  
lands given  
for military  
services.

**23.** In all cases in which land has heretofore been or shall hereafter be given by the Dominion for military services, warrants shall be granted in favour of the parties entitled to such land by the Minister of Militia and Defence, and such warrants shall be recorded in the Dominion Lands Office in books to be kept for the purpose, and shall be located as hereinafter provided, and patents for the lands so located shall be issued accordingly. 10

Such warrants  
may be lo-  
cated in lands  
open for sale,  
or given in  
payment for  
lands.

1. Such warrants may be located by the owners thereof, in any of the Dominion lands open for sale, or may be received in payment for a homestead claim for the same number of acres, or in payment in part or in full, as the case may be, for the purchase at public or private sale of Dominion lands, at the value shown upon their face, estimating the number of acres in the warrant at the price mentioned therein. 20

As to warrants  
accepted as  
purchase  
money.

2. In accepting warrants as so much purchase money, any deficiency shall be payable in cash. But should any payment by warrant or by amount in warrants be in excess, the Government will not return any such excess.

As to locating  
warrants.

3. In locating a warrant, should the same be for any aliquot part of a section, it must be located in a legal subdivision of corresponding extent; for instance, a warrant calling for one hundred and sixty acres must be located in a certain quarter section intact. 30

Assignments  
of Military  
Bounty Land  
Warrants.

**24.** Assignments of Military Bounty land warrants duly made and attested before any person entitled by law to take affidavits shall be recognized as conveying the beneficial interest therein, but no assignment of the interest of the original owner (except in the case of Red River soldiers' warrants as hereinafter mentioned) will be held as transferring such interest, unless the assignment be endorsed on the back of the warrant; and in subsequent assignments the warrant, unless the same has been lost (as hereinafter mentioned) must be attached to and form part of the claimant's or locatee's papers. 40

Warrant or  
Patent to  
issue in favor  
of legal repre-

**25.** In all cases where an officer or soldier entitled to Military Bounty land dies before the issue of the warrant, or between the issue of the warrant and the location thereof, the warrant or the patent, or both, as the case may be, shall issue in favour

of the legal representatives of such deceased officer or soldier, according to the law of the Province or Territory where the lands in question lie, who shall be ascertained in such manner and by such Court, Commissioners or other tribunal, as the Legislature of such Province shall prescribe by any Act passed for that purpose, and shall be certified to the Governor under such Act,—or if the lands be in any territory in which there is then no Legislature, then in such manner and by such Commissioners as the Governor in Council may from time to time direct,—  
 10 and any Order in Council in that behalf may vest in any Commissioners under it power to summon witnesses and examine them on oath and to compel the production of documents, and generally may vest in them all such powers and impose upon all other persons all such obligations, as the Governor in Council may deem necessary in order to ascertain and certify to the Governor the person or persons to whom the Patent ought to issue,—and on any such certificate under this clause the Patent shall issue in accordance therewith.

26. Whenever any warrant for Military Bounty land issued  
 20 in pursuance of this Act, is lost or destroyed, whether the same may or may not have been sold and assigned by the original owner, the Minister of Militia and Defence, (such loss or destruction having been proved to his satisfaction), may, and he is hereby required to cause a new warrant of like tenor to be issued in lieu thereof, in favour of the person to whom the warrant belonged at the time of its loss or destruction, if he be still living, or of his legal representatives as aforesaid, if he be no longer living, which new warrant may be assigned, located, and patented, and shall be of like value in every respect, with  
 30 the original warrant, and in any and all such cases of re-issue, the original warrant, in whosoever hands it may be, shall be null and void.

27. And whereas by order of the Governor in Council, dated the 25th April, 1871, it is declared that,—

The officers and soldiers of the 1st or Ontario and the 2nd or Quebec Battalion of Rifles, then stationed in Manitoba, whether in the service or depot companies, and not having been dismissed therefrom, should be entitled to a free grant of land without actual residence, of one quarter section,—such grant  
 40 is hereby confirmed and the Minister of Militia and Defence is hereby authorized and required to issue the necessary warrants therefor accordingly :

28. And whereas effect could not be given to the above mentioned Order in Council, until the lands in Manitoba had been surveyed, and in the mean time many of the said men so entitled as above have assigned their interest in such

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New warrant may issue in lieu of warrant lost or destroyed.

Free grant of land by Order in Council of 25th April, 1871, confirmed.

Assignments of interest in such free grants recognized,



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free grants,—such assignments duly made and attested, and having the certificate of discharge in the case of non-commissioned officers or private soldiers attached thereto, and filed in the Dominion Lands Office before the issue of the warrant, shall be held to transfer in each case the interest of the man so entitled in the warrant when issued, which latter, in every such case, shall be attached, after registry, to the assignment on file, and held for delivery to the party entitled thereto, or for location.

#### ORDINARY PURCHASE AND SALE OF LANDS.

10

Surveyed  
Dominion  
lands open for  
purchase at  
\$1 per acre.

Proviso.

**29.** Unappropriated Dominion lands, the surveys of which may have been duly made and confirmed, shall, except as otherwise hereinafter provided, be open for purchase at the rate of one dollar per acre; but no such purchase of more than a section, or six hundred and forty acres, shall be made by the same person; provided that whenever so ordered by the Secretary of State, such unoccupied lands as may be deemed by him expedient from time to time shall be put up at public sale (of which sale due and sufficient notice shall be given) at the upset price of one dollar per acre, and sold 20 to the highest bidder.

#### PAYMENTS FOR LANDS.

Payments for  
lands to be in  
cash, as a  
rule.

**30.** Payments for lands, purchased in the ordinary manner, shall be made in cash, except in the case of payment in military bounty warrants as hereinbefore provided.

#### TOWN PLOTS, ETC.

Secretary of  
State may re-  
serve tracts of  
land for Town  
or Village  
Plots.

**31.** The Secretary of State shall have power, from time to time, to set apart and withdraw from purchase and from the homestead clauses of this Act, any tract or tracts of land which it may be considered by him expedient to lay out into 30 Town or Village Plots, and to cause the same to be surveyed and laid out, and the lots so laid out to be sold, either by private sale and for such price as he may see fit, or at public auction.

Governor in  
Council may  
set apart  
lands for  
other public  
purposes.

**32.** The Governor in Council may also set apart and appropriate such Dominion lands as he may deem expedient, for the sites of market places, gaols, court houses, places of public worship, burying grounds, schools, benevolent institu- 40 tions, squares and for other like public purposes, and at any time before the issue of letters patent therefor, may alter or revoke such appropriation, as he deems expedient, and he

may make free grants for the purposes aforesaid of the lands so appropriated, the trusts and uses to which they are to be subject being expressed in the letters patent.

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#### HOMESTEAD RIGHTS OR FREE GRANT LANDS.

**33.** Any person who is the head of a family, or has attained the age of twenty-one years, shall be entitled to be entered for one quarter section or a less quantity of unappropriated Dominion lands, for the purpose of securing a homestead right in respect thereof. (Form A.)

Steps to be  
taken for the  
purpose of se-  
curing a home-  
stead right in  
respect of land,  
and provisions  
respecting the  
same.

10     1. Provided that the limitation of quantity in this clause, shall not prevent the granting of a wood lot to the same extent. person, under the provisions hereinafter made with respect to timber in surveyed Townships. Proviso, as to

2. When two or more persons have settled on and seek to obtain a title to the same land, the homestead right shall be in him who made the first settlement. More than one settler.

3. Provided, that in cases where both parties may have made valuable improvements, the Secretary of State may order a division of such land, in legal subdivisions, in such manner as may preserve to the said parties, as far as practicable their several improvements, and further, may direct that what the land of each of such parties, as so divided, may be deficient of a quarter section, shall be severally made up to them in legal subdivisions from unoccupied quarter sections adjoining. If both have improved.

4. Questions as to the homestead right arising between different settlers shall be investigated by the Local Agent of the division in which the land is situated, whose report and recommendations, together with the evidence taken, shall be referred to the Secretary of State for decision. Interfering claims.

5. Every person claiming a homestead right from settlement must file his application for such claim, describing the land settled, with the Local Agent within whose district such land may be, within thirty days next after the date of such settlement, if in surveyed lands; but if in unsurveyed lands the claimant must file such application within three months after such land shall have been surveyed; and in either case proof of settlement and improvement shall be made to the Local Agent at the time of filing such application. Time for application.

40     6. Persons owning and occupying Dominion lands may be entered for other land lying contiguous to their lands, but the whole extent of land, including that previously owned and occupied, must not exceed one hundred and sixty acres, and must be in legal subdivision. Occupants of contiguous lands.

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Entry.

Entry of con-  
tiguous lands.

No patent for  
three years.

Issue of  
patent.

When parents  
die without  
devising.

Title before  
patent.

7. A person applying for leave to be entered for lands with a view of securing a homestead right therein, shall make affidavit before the Local Agent (Form B) that he is over twenty-one years of age, that he has not previously obtained a homestead under the provisions of this Act, that to the best of his knowledge and belief there is no person residing on the land in question, or entitled to enter the same as a homestead and that the application is made for his exclusive use and benefit, and for the purpose of actual settlement.

8. Upon making this affidavit, and filing it with the Local Agent, and on payment to him of an office fee of ten dollars for which he shall receive a receipt from the Agent, he shall be permitted to enter the land specified in the application. 10

9. In entries of contiguous lands, the settler must describe in his affidavit the tract he owns and is settled upon as his original farm. Actual residence on the contiguous land entered is not required but *bona fide* improvement and cultivation of it must be thereafter shewn for the period required by the provisions of this Act.

10. No patent shall be granted for the land until the expiration of three years from the time of entering into possession of it except as hereinafter provided. 20

11. At the expiration of three years the settler or his widow, her heirs or devisees, or, if the settler leaves no widow, his heirs or devisees, upon proof, to the satisfaction of the Local Agent that he, or his widow or his or her representatives as aforesaid, or some of them, have resided upon or cultivated the land for the three years next after the filing of the affidavit for entry, the settler or such claimant shall be entitled to a patent for the land, provided such claimant is then a subject of Her Majesty by birth or naturalization. 30

12. When both parents die, without having devised the land, and leaving a child or children under age, it shall be lawful for the executors (if any) of the last surviving parent, or the guardian or guardians of such child or children, with the approval of a Judge of a Superior Court of the Province or Territory, in which the lands lie, to sell the lands for the benefit of the infant or infants, but for no other purpose; and the purchaser, in such case, shall acquire the homestead right by such purchase, and on carrying out the unperformed conditions of such right, shall receive a patent for the land, upon payment of the office fees. 40

13. The title to lands shall remain in the Crown until the issue of the patent therefor, and such lands shall not be liable to be taken in execution before the issue of the patent.



14. In case it is proved to the satisfaction of the Local Agent that the settler has voluntarily relinquished his claim, or has been absent from the land entered by him, for more than six months in any one year, then the right to such land shall be forfeited; and the settler so relinquishing or abandoning his claim shall not be permitted to make more than a second entry.

Settler abandoning his claim.

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15. Any person who has availed himself of the foregoing provisions may, before the expiration of the three years, obtain a patent for the land entered upon by him, including the wood lot, if any, forming an addition to the grant thereof, as hereinafter provided, on paying the Government price thereof at the date of entry, and making proof of settlement and cultivation for not less than twelve months from the date of entry.

Patent before three years on payment of price, &c.

16. Proof of actual settlement and cultivation shall be made by affidavit of the claimant before the Local Agent, corroborated on oath by two credible witnesses.

Proof of improvement.

17. All assignments and transfers of homestead rights before the issue of the patent shall be null and void, but shall be deemed evidence of abandonment of the right; and the person so assigning or transferring shall not be permitted to make a second entry.

Assignments void.

18. The above provisions relating to homesteads shall only apply to agricultural lands, and shall not be held to apply to lands set apart as timber lands, or to those lands on which coal or minerals are at the time of entry known to exist.

Provisions to apply only to homesteads.

#### GRAZING LANDS.

34. Leases of unoccupied Dominion lands may be granted for grazing purposes to any person or persons whomsoever being *bona fide* settlers in the vicinity of the land sought to be leased, at such rent and for such term as the Secretary of State shall deem expedient; but every such lease of grazing land shall, among other things, contain a condition making such land liable for settlement or for sale as hereinbefore provided by this Act, at any time during the term of such lease, without compensation, save by a proportionate deduction of rent, and a further condition by which the Secretary of State may, on giving the lessee six months notice, cancel the lease at any time during the term.

Unoccupied Dominion lands may be leased to neighboring settlers for grazing purposes. Conditions.

#### HAY LANDS.

35. Leases of unoccupied Dominion lands, not exceeding a half quarter section, or eighty acres, to any one person, may be granted for the purpose of cutting hay thereon, to any person or persons whomsoever being *bona fide* settlers in the vicinity of such hay land, for such term and at such rent as the Secretary

Unoccupied Dominion lands may be leased to neighboring settlers for the purpose of cutting hay

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thereon, but not  
to the hindrance  
of the sale or  
settlement  
thereof.

Mines or  
minerals not to  
be reserved in  
patents of lands.

Any person  
may explore  
and purchase  
mining lands.

Mining lands in  
surveyed town-  
ships to be sold  
in legal sub-  
divisions. Those  
in unsurveyed  
territory, with-  
out the limits of  
the Fertile Belt,  
to be sold in  
blocks, to be  
called mining  
locations.

Description of  
such blocks.

Proviso.

Rent.

Proviso : when  
no prior right  
exists.

Further pro-  
vision.

of State may deem expedient; but such lease shall not operate to prevent at any time during the term thereof the sale or settlement of the lands described therein under the provisions of this Act, the lessee being paid in such case by the purchaser or settler, for fencing or other improvements made on such land, such sum as shall be fixed by the Local Agent, and allowed to remove any hay he may have made.

#### MINING LANDS.

36. No reservation of gold, silver, iron, copper, or other mines or minerals shall be inserted in any patent from the Crown granting any portion of the Dominion lands. 10

37. Any person or persons may explore for mines or minerals on any of the Dominion lands, surveyed or unsurveyed, and not then marked or staked out and claimed or occupied, and may, subject to the provisions hereinafter contained, purchase the same.

38. Mining lands, if in surveyed townships, may be acquired under the provisions herein contained, and shall be sold in legal subdivisions. When situate in unsurveyed territory and without the limits of the Fertile Belt, such lands shall be sold in blocks to be called mining locations; and every such mining location, except as hereinafter provided, shall be bounded by lines due north and south and due east and west, astronomically; and each such location shall correspond with one of the following dimensions, namely, eighty chains in length by forty in width, containing three hundred and twenty acres,—or forty chains square, containing one hundred and sixty acres,—or forty chains in length by twenty in width, containing eighty acres. 20

1. Provided further that in case of certain lands proving to be rich in minerals, the Secretary of State shall have the power to withdraw such lands from sale, and in lieu thereof institute a system of lease. 30

2. The rent payable to the Crown under any such lease shall be a royalty, not to exceed two and a half per cent, on the net profits of working.

3. Provided further, that when there are two or more applicants for the same tract, and a prior right in either or any of the applicants is not established to the satisfaction of the Secretary of State, the same may be tendered for by the claimants on stated terms of lease, and sold to the highest bidder. 40

4. Provided also that in territory supposed to contain minerals the Secretary of State may in his discretion reserve from sale, alternate locations, or quarter sections, or other legal subdivisions with the view of subsequently offering the same either for sale or lease at public competition.

39. Mining locations in unsurveyed territory shall be surveyed by a Deputy Surveyor, and shall be connected with some known point in previous surveys, or with some other known point or boundary (so that the tract may be laid down on the maps of the territory in the Dominion Lands Office) at the cost of the applicants, who shall be required to furnish, with their application, the Surveyor's plan, field notes and description thereof.

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40. No distinction in price shall be made between lands supposed to contain mines or minerals and farming lands, but both classes shall be sold at the uniform price of one dollar per acre; provided that clause twenty-nine of this Act as regards offering lands at public sale shall apply to coal and mineral lands also, when the same are in surveyed townships.

41. It shall also be lawful for the Secretary of State to exempt from the preceding provisions of this Act, such of the Dominion lands upon or adjoining the banks of rivers or other waters as may be supposed to contain valuable "Bar," "Bench," or "Dry" "Diggings" for gold or other precious metals; and the Governor in Council shall regulate, from time to time, as the same may become necessary and expedient, the nature and size of the claims containing such diggings, and shall fix the terms and conditions upon which the same shall be held and worked, and the royalty payable in respect thereof, and shall appoint and prescribe the duties of such officers as may be necessary to carry out such regulations.

#### INDIAN TITLE.

42. None of the provisions of this Act respecting the settlement of Agricultural lands, or the lease of Timber lands, or the purchase and sale of Mineral lands, shall be held to apply to territory the Indian title to which shall not at the time have been extinguished.

#### COAL LANDS.

43. Coal lands designated by the Government as such are hereby withdrawn from the operation of this Act as regards the rights of squatters to homesteads on the Dominion lands in advance of the Surveys.

44. Any person or persons desiring to carry on coal mining in unsurveyed territory, shall be protected in the possession of the lands on which such mining may be carried on, provided, that before entering on the working of such mines, such person or persons make written application to the Local Agent to purchase such land: such application must be accompanied by a description by a Deputy Surveyor setting forth generally



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continuous  
working.

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may be ex-  
empted from  
sale and  
settlement.  
Provisions of  
Act.

the situation and the dimensions of such land, and shall also be accompanied by payment of the price thereof, estimating the number of acres (which shall not exceed six hundred and forty) at the rate of one dollar per acre. Such application shall be filed by the Agent receiving the same—and on the survey of the Township containing the land applied for being effected, the claimant or claimants shall be entitled to a patent for such number of acres, in legal subdivisions, including and covering the mine worked, as shall correspond to the application and to the extent of land paid for.

10

Provided that such mine shall have been continuously worked during the interim between the application and the survey; but if the same should at any time during such interim cease to be worked for twelve consecutive months, unless the lands in question be no longer valuable for mining purposes, then the claim of the parties to the land shall lapse, and the mine shall be forfeited to the Crown, together with any and all purchase money which may have been paid to the Government on account thereof.

45. The Secretary of State, with the view of preventing undue monopoly in coal lands, may in his discretion, on a township being surveyed, exempt from the sale and settlement provisions of this Act the sections or other legal subdivisions of land which may be said to contain coal, except those on which mining may have been carried on under the next preceding clause; and the same shall be subsequently sold or otherwise dealt with in such manner as may be deemed expedient by the Governor in Council.

20

## TIMBER AND TIMBER LANDS.

### TIMBER IN TOWNSHIPS SURVEYED FOR SETTLEMENT.

30

Timber form-  
ing islands or  
belts in town-  
ships thrown  
open for  
settlement,  
to be disposed  
of so as to  
benefit the  
greatest possi-  
ble number of  
settlers and  
prevent petty  
monopoly,  
and how.

46. And whereas it is expedient that the timber forming Islands or Belts in townships thrown open for settlement, should be so disposed of as to benefit the greatest possible number of settlers and to prevent petty monopoly, it is therefore enacted as follows :—

1. In the subdivision of townships which may consist partly of prairie and partly of timber land, such of the sections or subdivisions of sections containing Islands, Belts, or other tracts of timber, shall be subdivided into such number of wood lots of not less than ten, and not more than twenty acres in each lot, as will afford, so far as the extent of wood land in the township may permit, one such wood lot to each quarter section prairie farm in such township.

40

2. Provided, that neither the sections and parts of sections in each township vested in the Hudson's Bay Company by this Act nor those sections set apart herein for schools, shall be subject in any way to the operation of the next preceding sub-clause.

3. The division of such wood lots shall be by squared posts, numbered from one upwards, marked with a marking iron, and planted in the section lines bounding the timber tract so laid out; and each wood lot shall front on a section road allowance.

10 4. Provided, that in case an Island or Belt of timber be found in the survey of any township to lie in a quarter section or several quarter sections, but in such manner that no single quarter section shall have more of such timber than twenty-five acres, such timber shall be taken to be appurtenant to such quarter section or quarter sections, and shall not be further divided into wood lots.

20 5. The Local Agent, as settlers shall apply for homestead rights in the township, and in the same order as such applications shall be made, shall apportion to each quarter section so applied for, one of the adjacent wood lots, and such wood lot shall appertain to and form an addition to such grant, and shall be entered on the Local Agent's books and be returned by him as in connection therewith; and the wood lot set apart with any homestead quarter section shall be a free gift in connection with such homestead, and in addition thereto, and on such homestead claimant fulfilling all the requirements of this Act in that behalf, the patent for such quarter section shall also include such wood lot.

30 6. Provided, that any homestead claimant, who, previous to the issue of the patent shall sell any of the timber on his claim or on the wood lot appertaining to his claim, to saw mill proprietors or to any other than settlers for their own private use, shall be guilty of a trespass, and may be prosecuted therefor before a Justice of the Peace, and upon conviction thereof, shall be subject to a fine or imprisonment, or both; and further, such person shall forfeit his claim absolutely.

#### OTHER TIMBER AND TIMBER LIMITS.

40 47. Any tract of land covered by forest timber may be set apart as timber lands, and reserved from sale and timber lands. Reservation of settlement.

48. Except where it may be thought expedient by the Secretary of State to divide a township into two or more timber limits, the several townships composing any such tract shall each form a limit. Each township to form a timber limit.

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tinued.

Appendix of Statutes.	What "timber" includes under this heading.	49. In the enactments and provisions under the present heading, <i>Timber and Timber Lands</i> , the word "timber" includes all lumber, and all products of timber hereinafter mentioned, or of any other kind whatever, including firewood or bark.	
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An Act respecting the Public Lands of the Dominion, 14th April 1872—continued.	Right of cutting timber to be sold to the highest bidder.	50. The right of cutting timber on such limits shall be put up at a bonus per square mile, varying according to the situation and value of the limit, and sold to the highest bidder by competition, either by tender or at public auction.	
	Purchaser to have a lease for 21 years.	51. The purchaser shall receive a lease granting the right of cutting timber on the land for twenty-one years, and containing the following conditions, with such others as shall have been embodied in the notice of sale, that is to say :—	10
	Conditions of lease.	1. The lessee to erect a saw mill or mills in connection with such limit and lease, and subject to any special conditions which may be agreed upon and stated in the lease, such mill or mills to be of capacity to cut at the rate of a thousand feet, board measure, in twenty-four hours, for every two and a half square miles of limits in the lease, or shall establish such other manufactory of wood goods as may be agreed upon as the equivalent of such mill or mills, and the lessee to work the limit, in the manner and to the extent provided in the lease, within two years from the date thereof, and during each succeeding year of the term.	20
	Mills.		
	To take all timber.	2. To take from every tree he cuts down all the timber fit for use, and manufacture the same into sawn lumber or some other such saleable product as may be provided in the lease or by any Regulations made under this Act.	
	To prevent destruction.	3. To prevent all unnecessary destruction of growing timber on the part of his men, and to exercise strict and constant supervision to prevent the origin or spread of fires.	30
	Monthly returns.	4. To make returns to the Government monthly, or at such other periods as may be required by the Secretary of State, or by Regulations under this Act, sworn to by him or by his agent or employee cognizant of the facts, declaring the quantities sold or disposed of as aforesaid, of all sawn lumber, timber, railway car stuff, ship timbers and knees, shingles, laths, cordwood or bark, or any other product of timber from the limit, in whatever form the same may be, sold or otherwise disposed of by him during such month or other period, and the price or value thereof.	40
	Rent.	5. To pay, in addition to the bonus, an annual ground rent of two dollars per square mile, and further a royalty of five per cent. on his monthly account.	
	Books.	6. To keep correct books of such kind and in such form, as may be provided by his lease or by Regulation under this	



Act, and to submit the same for the inspection of the collector of dues whenever required, for the purpose of verifying his returns aforesaid.

7. The lease shall describe the lands upon which the timber may be cut, and shall vest in the lessee during its continuance, the right to take and keep exclusive possession of the lands so described, subject to the conditions hereinbefore provided or referred to; and such lease shall vest in the holder thereof, all right of property whatsoever in all trees, timber, 10 lumber and other products of timber, cut within the limits of the lease during the continuance thereof, whether such trees, timber and lumber or products be cut by authority of the holder of such lease or by any other person, with or without his consent; and such lease shall entitle the lessee to seize in replevin, revendication or otherwise, as his property, such timber where the same is found in the possession of any unauthorised person, and also to bring any action or suit at law or in equity against any party unlawfully in possession of any such timber, or of any land so leased, and to prosecute all trespassers thereon 20 and other such offenders as aforesaid, to conviction and punishment, and to recover damages, if any: and all proceedings pending at the expiration of any such lease may be continued and completed as if the lease had not expired.

8. Such lease shall be subject to forfeiture, for infraction of any one of the conditions to which it is subject, or for any fraudulent return; and in such case the Secretary of State shall have the right, without any suit or other proceeding at law or in equity, or compensation to the lessee, to cancel the same, and to make a new lease or disposition of the limit 30 described therein, to any other party, at any time during the term of the lease so cancelled: Provided, that the Secretary of State, if he sees fit, may refrain from forfeiting such lease for non-payment of dues, and may enforce payment of such dues in the manner hereinafter provided.

9. The Lessee who faithfully carries out the above conditions, shall have the refusal of the same limits, if not required for settlement, for a further term not exceeding twenty-one years, on payment of the same amount of bonus per square mile as was paid originally, and on such lessee 40 agreeing to such conditions, and to pay such other rates, as may be determined on for such second term.

52. If, in consequence of any incorrectness in survey, or other error or cause whatsoever, a lease is found to comprise lands included in one of prior date, or any lands sold, granted, leased or lawfully set apart for any other purpose under this Act, the lease first mentioned shall be void in so far as it

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Rights of  
lessee.

Forfeiture of  
lease.

Renewal of  
lease.

Lease of land  
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leased, sold,  
granted or set  
apart to be  
void.

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Dues to the  
Crown to bear  
interest and  
be a lien on  
timber cut on  
limits. Such  
timber may  
be seized and  
sold in pay-  
ment.

Timber cut  
under lease to  
be liable for  
dues, &c.

Mode of en-  
forcing pay-  
ment in case  
of removal of  
timber out of  
Canada.

interferes with any such previous lease, sale, grant or setting apart.

#### FURTHER OBLIGATIONS OF PARTIES OBTAINING LICENSES.

**53.** Any ground rent, royalty or other dues to the Crown, on timber cut within any such limit, which are not paid at the time when they become due and payable, shall bear interest at the rate of six per cent. per annum, until paid, and shall be a lien on any timber cut within such limits. And whenever the ground rent on any limit, or any royalty on any timber is not paid within three months after it becomes due under the lease or regulations in that behalf, the Crown Timber Agent may with the sanction of the Secretary of State, seize so much of the timber cut on such limits, and in the possession of the lessee or on his premises, whether sold or unsold, as will in his opinion be sufficient to secure the payment of such rent and royalty on the timber seized, and all interest and expenses of seizure and sale and may detain the same as security for the payment thereof: and if such payment be not made within three months after such seizure, the Crown Timber Agent may, with such sanction as aforesaid, sell such timber by public auction, and after deducting the sum due to the Crown, the interest thereon and expenses aforesaid, he shall pay over the balance, if any, to the lessee or owner of the timber. 10 20

**54.** All timber cut under lease shall be liable for the payment of the Crown dues thereon, so long as and where-soever the said timber or any part of it may be found (whether it be or be not manufactured into deals, boards or any other products); and all officers or agents employed in the collection of such dues may follow all such timber and may seize and detain the same wherever they are found until the dues thereon are paid or secured, and if payment be not made or secured within three months after such seizure, the timber may be sold by the Crown Agent, and the proceeds disposed of as provided by the next preceding clause. 30

**55.** And in case the payment of the Crown dues on any timber has been evaded by any lessee or other party, by the removal of such timber or products out of Canada or otherwise, the amount of dues so evaded, and any expenses incurred by such officer or the Government in enforcing payment of the said dues under this Act, may be added to the dues remaining to be collected on any other timber cut on Dominion lands by the same lessee or by his authority, and be levied and collected, or secured, on such timber, together with such last mentioned dues, in the manner provided by clause fifty-three; or the amount due to the Crown, of which payment has been 40

evaded, may be recovered by action at law, in the name of the Secretary of State, or his resident Agent, in any Court having jurisdiction in civil cases to the amount.

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56. The Secretary of State may, in his discretion, take Bonds or notes or authorize the taking of bonds or promissory notes for any money due to the Crown, interest and costs, as aforesaid, or for double the amount of all dues, fines and penalties and costs, incurred or to be incurred, and may then release any timber upon which the same would be leviable, whether under seizure or not; but the taking of such bonds or notes shall not affect the lien and right of the Crown to enforce payment of such money on any other timber cut on the same limit, if the sums for which such bonds or notes are given are not paid when due.
- An Act respecting the Public Lands of the Dominion. 14th April 1872—continued.

#### LIABILITY OF PERSONS CUTTING WITHOUT AUTHORITY.

57. If any person without authority cuts, or employs or induces any other person to cut or assist in cutting, any timber of any kind, on any Dominion lands wheresoever situate, or removes or carries away, or employs or induces, or assists any other person to remove or carry away any timber of any kind, so cut from any Dominion lands as aforesaid, he shall not acquire any right to the timber so cut, or any claim for remuneration for cutting the same, preparing the same for market, or conveying the same to or towards market; and when the timber has been removed out of the reach of the Crown Timber Officers, or it is otherwise found impossible to seize the same, he shall, in addition to the loss of his labour and disbursements, forfeit a sum not exceeding three dollars for each tree, which, or any part of which he is proved to have cut, or carried away; and such sum shall be recoverable with costs, at the suit and in the name of the Crown, in any Court having jurisdiction in civil matters to the amount of the penalty;—and in all such cases the burden of proof of his authority to cut and take the timber shall lie on the party charged, and the averment of the party seizing or prosecuting, that he is duly employed under the authority of this Act, shall be sufficient proof thereof, unless the defendant proves the contrary.
- Penalty for cutting timber on Dominion lands without authority.

1. Whenever satisfactory information, supported by affidavit made before a Justice of the Peace, or before any other competent officer or person, is received by any Crown Timber Officer or Agent, that any timber has been cut without authority on Dominion lands, and describing where the same can be found,—or if any Crown Timber Officer or Agent, from other sources of information, or his own knowledge,
- Seizure on affidavit, &c.



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If the timber  
has been  
mixed with  
other timber.

May be re-  
leased on  
security.

Officer seizing  
timber may  
call in assist-  
ance.

Resistance or  
obstruction,  
a felony.

Carrying away  
timber seized  
without per-  
mission, a  
felony.

is aware that any timber has been cut without authority on such lands, the said agent, or officer, or either of them, may seize or cause to be seized, in Her Majesty's name, the timber so reported or known to be cut, wherever it is found, and place the same under proper custody, until a decision can be had in the matter by competent authority;

2. And where the timber so reported or known to have been cut without authority, has been made up with other timber into a crib, dram, or raft, or in any other manner has been so mixed up at any mill or elsewhere, as to render it impossible or very difficult to distinguish the timber so cut without authority, from other timber with which it is mixed up, the whole of the timber so mixed shall be held to have been cut without authority, and shall be liable to seizure and forfeiture accordingly, until satisfactorily separated by the holder. 10

3. In case any timber cut without authority on Dominion lands, or any product thereof, is seized under the provisions of this Act, by any Crown Timber Agent or Officer, he may allow such timber or product thereof to be removed and disposed of, on receiving sufficient security, by bond or otherwise, to his satisfaction for the full value thereof, or for payment of double the amount of all dues, fines, penalties and costs incurred or imposed thereon as the case may be. 20

RESISTING SEIZURE—REMOVING TIMBER SEIZED—CONDEMNATION OF SUCH TIMBER.

58. Any officer or person seizing timber in the discharge of his duty under this Act may, in the name of the Crown, call in any assistance necessary for securing and protecting the timber so seized; and if any person under any pretence, either by assault, force or violence, or by threat of such force or violence, in any way resists or obstructs any officer or person acting in his aid, in the discharge of his duty under this Act, such person shall be guilty of felony, and being convicted thereof, shall be punishable accordingly. 30

59. If any person, whether pretending to be the owner or not, either secretly or openly, and whether with or without force or violence, takes or carries away, or causes to be taken and carried away, without permission of the officer or person who seized the same, or of some competent authority, any timber seized and detained for any lawful cause under this Act, before the same has been declared by competent authority to have been seized without due cause, such person shall be deemed to have stolen such timber, being the property of 40

the Crown, and to be guilty of felony, and being convicted thereof, shall be punishable accordingly.

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60. All timber seized under this Act on behalf of the Crown as being forfeited, shall be deemed to be condemned, unless the person from whom it was seized, or the owner thereof, within one month from the day of the seizure, gives notice to the seizing officer, or to the Crown Timber Agent or Officer, under whose authority the seizure was made, that he claims or intends to claim the same; pending which the
- 10 Officer or Agent seizing shall report the facts to the Secretary of State, who may order the sale of the said timber, by the said Officer or Agent, after a notice on the spot, or at the residence or office of the person from whom it was seized, of at least thirty days: or if, within fifteen days after the claim has been put in, the claimant shall not have instituted proceedings before a court of competent jurisdiction to contest the seizure; or if the decision of the court be against him; or should the claimant fail duly to prosecute such proceedings in the opinion of the Judge before whom such case may be
- 20 tried, (and who may for that cause dismiss the suit on the expiration of three months from the date on which it was instituted, anything to the contrary hereinbefore enacted notwithstanding), the timber may be confiscated and sold for the benefit of the Crown, by order of the Secretary of State, after a notice on the spot of at least thirty days: Provided nevertheless, that in all cases of timber being ascer-
- 30 for doing so, may impose and receive for the Crown a fine or penalty, to be levied on such timber, in addition to all costs incurred, instead of seizing or selling the same.

Timber seized as forfeited shall be deemed to be condemned in default of owner claiming it within one month.

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#### GENERAL PROVISIONS.

61. Whenever any Crown Timber Agent, or other Officer or Agent of the Secretary of State is in doubt as to whether any timber has, or has not, been cut without authority, or is, or is not, liable to Crown dues on the whole or any part thereof, he may enquire of the person or persons in possession or in charge of such timber as to when and where the same
- 40 was cut; and if no satisfactory explanation, on oath or otherwise, as he may require, be given to him, he may seize and detain such timber until proof be made to the satisfaction of the Secretary of State or of such Crown Timber Agent or Officer, that such timber has not been cut without authority, and is not liable, either in whole or in part, to Crown dues

In the absence of satisfactory explanations timber may be seized as cut without authority, or for dues.

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The burden of  
proof where  
timber was  
cut, or of pay-  
ment of dues  
to lie on the  
owner or  
claimant.

of any kind: and if such proof be not made, within thirty days after such seizure, such timber may be dealt with as timber cut without authority, or on which the Crown dues have not been paid, according to the circumstances of the case, and the dues thereon may be recovered as provided in the fifty-fifth clause.

62. And whenever any timber is seized for non-payment of Crown dues or for any cause of forfeiture, or any prosecution is brought for any penalty or forfeiture under this Act, and any question arises whether the said dues have been paid on such timber, or whether the said timber was cut on other than any of the Dominion lands aforesaid, the burden of proving payment, or on what land the said timber was cut, shall lie on the owner or claimant of such timber, and not on the officer who seizes the same or the party bringing such prosecution. 10

#### SLIDES, ETC.

Right to  
slides, &c.,  
not to be  
affected by  
sales or grants  
of land, unless  
expressly  
mentioned.

63. No sale or grant of any Dominion lands shall give or convey any right or title to any slide, dam, pier, or boom, or other work, for the purpose of facilitating the descent of timber or saw-logs, previously constructed on such land, or on any stream passing through or along such land, unless it be expressly mentioned in the letters patent or other documents establishing such sale or grant, that such slide, dam, pier or boom, or other work, is intended to be thereby sold or granted. 20

Free use of  
slides not  
affected.

1. The free use of slides, dams, piers, booms or other works on streams, to facilitate the descent of lumber and saw-logs, and the right of access thereto for the purpose of using the same and keeping them in repair, shall not in any way be interrupted or obstructed, by, or in virtue of, any sale or grant of Dominion lands made subsequent to the construction of such works. 30

Free use of  
streams and  
lakes not  
affected.

64. The free use, for the floating of saw-logs and other timber rafts and dams, of all streams and lakes that may be necessary for the descent of timber from Dominion lands, and the right of access to such streams and lakes, and of passing and repassing on or along the land on either side thereof, and wherever necessary for such use thereof, and over all existing or necessary portage roads past any rapids or falls, or connecting such streams or lakes, and over such roads, other than road allowances, as owing to natural obstacles may be necessary for the taking out timber or saw-logs from Dominion lands, and the right of constructing slides where necessary, shall continue uninterrupted, and shall not be affected or obstructed by, or in virtue of, any sale or grant of such lands. 40



## PATENTS.

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65. A Deputy Governor may be appointed by the Governor General, who shall have the power in the absence or under instructions of the Governor General, to sign letters patent of Dominion lands; and the signature of such Deputy Governor to such patents, shall have the same force and virtue as if such patents were signed by the Governor General.

Patent may  
be signed by a  
Deputy  
Governor.

66. Whenever a patent has been issued to or in the name of a wrong party or contains any clerical error, misnomer or wrong or defective description of the land thereby intended to be granted, or there is in such patent an omission of the conditions of the grant, the Secretary of State may (there being no adverse claim) direct the defective patent to be cancelled and a correct one to be issued in its stead, which corrected patent shall relate back to the date of the one so cancelled and have the same effect as if issued at the date of such cancelled patent.

Patent issued  
in error may  
be cancelled.

67. In all cases in which grants or letters patent have been issued for the same land, inconsistent with each other, through error, and in all cases of sales or appropriations of the same land inconsistent with each other, the Secretary of State may order a new grant equivalent in value to the land of which any grantee or purchaser is thereby deprived, at the time the same was granted; or may, in cases of sale, cause repayment to be made of the purchase money with interest; or when the land has passed from the original purchaser, or has been improved before the discovery of the error, or when the original grant was a free grant, the Secretary of State may assign land or grant a certificate entitling the party to purchase Dominion lands of such value as to him, the said Secretary of State, may seem just and equitable under the circumstances; but no claim under this clause shall be entertained unless it is preferred within five years after discovery of the error.

Remedy in  
cases of sales  
or patents of  
land incon-  
sistent with  
each other.

Proviso.

68. Whenever by reason of false survey, or error in the books or plans in the Dominion Lands Office, any grant, sale or appropriation of land is found to be deficient, the Secretary of State may order a free grant equal in value to the ascertained deficiency at the time such land was granted or sold; or in case any parcel of land contains less than the quantity of land mentioned in the patent therefor, the Secretary of State may order the purchase money of so much land as is deficient, with interest thereon from the time of the application therefor, to be paid back to the purchaser; or if the land has passed from the original purchaser, then the purchase money which the claimant (provided he was ignorant of the deficiency at

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cases of defi-  
ciency in  
quantity of  
land sold or  
granted.

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Patents issued  
through fraud,  
or in error or  
improvidence  
may be de-  
creed to be  
void.

Remedy in  
cases of re-  
fusal to deliver  
up possession  
of forfeited  
land or to  
vacate land  
wrongfully  
held.

Assignments  
of Dominion  
lands to be  
registered.

the time of his purchase) has paid for so much of the land as is deficient, with interest thereon, from the time of the application therefor, to be paid to him in land or in money, as he, the said Secretary of State, may direct: or, in case of a free grant, he may order a grant of other land, equal in value to the land so intended as a free grant, at the time such grant was made; but no such claim shall be entertained unless application has been made within five years from the date of the patent, nor unless the deficiency is equal to one-tenth of the whole quantity described as being contained in the particular lot or parcel of land granted. 10

69. In all cases wherein patents for lands have issued through fraud, or in error, or improvidence, any Court having competent jurisdiction in cases respecting real property in the Province or place where such lands are situate, may, upon action, bill or plaint respecting such lands and upon hearing of the parties interested, or upon default of the said parties after such notice of proceeding as the said Court shall order, decree such patent to be void; and upon the Registry of such decree in the Office of the Registrar General of the Dominion, such patent shall be void to all intents. 20

70. When any settler, purchaser or other person refuses or neglects to deliver up possession of any land after forfeiture of the same under the provisions of this Act, or whenever any person is wrongfully in possession of Dominion land, and refuses to vacate or abandon possession of the same, the Secretary of State may apply to a Judge of any Court having competent jurisdiction in cases respecting real property in the Province or place in which the land lies, for an order in the form of a writ of ejectment or of *habere facias possessionem*, and the said Judge, upon proof to his satisfaction that such land was so forfeited, and should properly revert to the Crown, shall grant an order upon the settler or person or persons in possession, to deliver up the same to the Secretary of State or person by him authorized to receive such possession; and such order shall have the same force as a writ of *habere facias possessionem*, and the Sheriff shall execute the same in like manner as he would execute the said writ in an action of ejectment or petitory action. 30

71. The Secretary of State shall keep a book for registering, at the option of the parties interested, any assignment of rights to Dominion lands which are assignable under this Act, upon proof to his satisfaction that such assignment is in conformity with this Act; and every assignment so registered shall be valid against any other previously made but subsequently registered, or unregistered; but any assign- 40

ment to be registered must be unconditional, and all conditions on which the right depends must have been performed, or dispensed with by the Secretary of State, before the assignment is registered.

72. On any application for a patent by the heir, assignee, devisee or legal representative of a party dying entitled to such patent, the Secretary of State may receive proof of the facts in such manner as he may see fit to require, and upon being satisfied that the claim has been justly established may allow the same and cause a patent to be issued accordingly: but nothing in this clause shall limit the right of the party claiming a patent to make his application as provided for in clause twenty-five of this Act.

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tinued.

Patent may be  
issued in  
favour of re-  
presentative  
of party dying  
entitled there-  
to.

## SURVEYS AND SURVEYORS.

WHO SHALL BE COMPETENT TO SURVEY THE DOMINION LANDS.

73. No person shall act as a surveyor of Dominion lands unless he shall, previously to the passing of this Act, have been duly qualified by certificate, diploma or commission, to survey the Crown lands in some one of the Provinces of the Dominion, or shall have become qualified under the provisions hereinafter set forth, that is to say:—

1. Except such persons as at the time of the passing of this Act hold certificates, diplomas or commissions to practise as surveyors, as hereinbefore set forth, no person shall be competent to act professionally as a surveyor of Dominion lands in Manitoba, or the North-West Territories, unless he shall undergo an examination before the Board of Examiners hereinafter mentioned, or be exempt from undergoing such examination under the provisions hereinafter contained, and receive a commission certifying that he is qualified to act as such.

2. Persons so qualified shall be styled "Deputy Surveyors of Dominion lands."

## BOARD OF EXAMINERS.

74. There shall be a Board of Examiners for the examination of candidates for such commission as Deputy Surveyors, to consist of the Surveyor General and eight other competent persons to be appointed from time to time by Order in Council: and the times and places of the meetings of the Board shall from time to time be fixed and made public by notice in the *Canada Gazette*.

Surveyor  
General, with  
eight Col-  
leagues, ap-  
pointed by the  
Governor to  
form Board.



Appendix of Members of  
Statutes. Board to be  
sworn.

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Secretary of  
Board of  
Examiners.

1. Each member of the said Board shall take an oath of office according to form C, to be administered by a judge of any one of the Superior Courts in any Province of the Dominion, who is hereby authorized and required to administer such oath; and any three of the said members shall form a quorum.

2. The said Board shall from time to time appoint a fit and proper person to be Secretary thereof, who shall keep a record of its proceedings.

#### ADMISSION OF DEPUTY SURVEYORS.

10

Qualifications  
for commis-  
sion as Deputy  
Surveyor.

75. No person shall receive a commission from the said Board authorizing him to practice as a Deputy Surveyor of Dominion lands, until he has attained the full age of twenty-one years, and has passed a satisfactory examination before the said Board in the following subjects, that is to say: Euclid (first six books), Plane Trigonometry, Mensuration of Superficies, the keeping of Field Notes, Plotting and Map Drawing, Spherical Trigonometry, Astronomy and Geology, practical surveying operations, and the use of instruments; nor unless he shall be perfectly conversant with the system of survey as embodied in this Act, and with the manual of standing instructions and regulations published from time to time for the guidance of Deputy Surveyors employed in surveys of Dominion lands. 20

Conditions  
precedent to  
examination  
for Commis-  
sion.

76. No person shall be entitled to be examined before such Board (except as hereinafter provided) unless he shall have previously served regularly and faithfully for and during the period of three successive years, under articles in writing, in the form D, duly executed before two witnesses, as pupil to a Land Surveyor lawfully practising during the said period as a Deputy Surveyor of Dominion lands, nor unless he shall produce a certificate from such practising Deputy Surveyor of his having so served during the said period, and shall also produce satisfactory testimony as to his character for probity and sobriety. 30

Future Pro-  
vincial Land  
Surveyors to  
be entitled to  
examination  
for Commis-  
sions as De-  
puty Sur-  
veyors with-  
out having  
served under

77. It shall not be necessary for any person who may, after the passing of this Act, become duly qualified by diploma, certificate or commission to survey the Crown Lands in some one of the Provinces of the Dominion, to serve under articles as aforesaid to entitle such person to examination by the said Board for a commission as a Deputy Surveyor of Dominion lands, but such person shall be entitled to such examination without any further service, at any regular meeting of the Board, and if found competent shall receive such commission: Provided, nevertheless, that in case such person should not 40

on the first examination be found qualified, the Board may grant him a second examination after he shall have passed through such further course of theory or practice as may have been recommended by the Board; Provided further that any person who may have acquired a certificate, diploma or commission in any one of the Provinces of the Dominion where the course and examination prescribed are similar to those in clause seventy-five of this Act shall not be required to be re-examined by the Board, but shall, upon proof of the facts, and payment of the admission fee fixed by sub-clause four of clause eighty-four of this Act, receive from the Board a Commission as a Deputy Surveyor of Dominion lands.

78. No person claiming to be examined before the said Board as having served the necessary period fixed by this Act under articles to a Deputy Surveyor shall have the right to such examination, unless he shall have transmitted to the Secretary of the Board within three months of the date of such articles, a duplicate thereof, together with a fee of two dollars for receiving and filing the same; and the said Secretary shall acknowledge by post the receipt of such papers and shall carefully file and keep the same with the records of the Board.

79. If any Deputy Surveyor dies or leaves the Dominion or is suspended or dismissed, his pupil may complete his term under articles as aforesaid with any other Deputy Surveyor.

80. Any Deputy Surveyor may by an instrument in writing transfer a pupil with his own consent, to any other Deputy Surveyor, with whom such pupil may serve the remainder of his term.

81. Any person who may have been duly admitted as a surveyor of lands in any part of Her Majesty's Dominions other than Canada, shall be entitled to an examination by the said Board, and to a commission if found qualified, on his producing a written certificate of a Deputy Surveyor that such person has within the previous two years served for six months with him continuously engaged in surveying the Dominion lands, and that he considers such person as in every way qualified to pass an examination for a commission as a Deputy Surveyor.

82. Any person who shall have followed a regular course of study in all the branches of education required by this Act for admission as a Deputy Surveyor through the regular sessions for at least two years, in any college or university where there may be organized a complete course of such instruction, and who has thereupon received from such college or university a certificate, diploma, or degree, vouching therefor, shall not

articles to a  
Deputy  
Surveyor.

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Duplicate of  
articles of  
clerkship to be  
transmitted to  
Secretary  
within three  
months after  
their date.

Pupil of a  
Deputy Sur-  
veyor may com-  
plete his term  
with another.

Assignment of  
Articles of  
Clerkship.

Surveyors in  
H.M. Do-  
minions, other  
than Canada,  
entitled to  
examination  
after six  
months'   
practice.

Graduates of  
Colleges and  
Universities  
to be entitled  
to examina-  
tion after one  
year's service.

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tinued.

Candidates for  
examination  
to give notice  
to Secretary.

Table of fees  
payable under  
this Act.

Allowances to  
Members of  
Board of  
Examiners.

Proviso.

Board may  
examine can-  
didate on  
oath.

Successful  
candidates to  
receive com-  
missions, and  
give security  
and take oath  
of office.

be obliged to serve three years as aforesaid but shall be entitled to examination after one year's service under articles with a Deputy Surveyor as aforesaid.

**83.** Every person desiring to be examined before the said Board for a commission as a Deputy Surveyor shall give due notice thereof in writing to the Secretary at least two months previous to the meeting of the Board, enclosing with such notice the fee of two dollars.

**84.** The following fees shall be paid under the provisions of this Act :

1. To The Secretary of the Board of Examiners by each pupil, at the time of transmitting to such Secretary the Indenture or Articles of such pupil, two dollars.

2. To the Secretary of the Board by each candidate for examination, with his notice thereof, two dollars.

3. To the Secretary of the Board by each applicant obtaining a commission, as his fee thereon, two dollars.

4. To the Secretary of the Board as an admission fee by each applicant receiving a commission, twenty dollars, but such amount shall be paid over to the Surveyor General, and be accounted for in like manner as other public moneys received by him.

**85.** Each of the members in attendance at the said Board during examinations and the Secretary shall receive five dollars for each day's sitting, and the actual travelling and living expenses incurred by such member, and consequent upon such attendance; and the Secretary of State is hereby authorized and required to pay such sums: Provided, that no member of the Board, if at the time of the meeting, he be over one hundred miles distant from the place of meeting, shall receive any allowance for being present at such meeting, unless such member shall have been previously specially notified to attend the same by the Secretary.

**86.** The Board may examine any candidate on oath (which oath may be administered by any one of the Examiners) as to his actual practice in the field, and with regard to his instruments.

**87.** Each person passing the Examination prescribed by this Act shall receive a commission from the Board in accordance with form E in the schedule to this Act, and each applicant after receiving such commission shall, jointly and severally with two sufficient sureties to the satisfaction of the Board, enter into a bond in the sum of one thousand dollars, to Her Majesty, Her Heirs and Successors, conditioned for the due and faithful performance of the duties of his office,

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and shall take and subscribe the oath of allegiance, and the following oath, before the Board of Examiners, any one of whom is hereby empowered to administer the same:—

“I, \_\_\_\_\_, do solemnly swear (or affirm, as the case may be) that I will faithfully discharge the duties of a Deputy Surveyor of Dominion lands according to law, without favour, affection or partiality. So help me God.”

1. Until the above formalities shall have been gone through the said commission of Deputy Surveyor shall have no effect.

10 2. The said oaths of allegiance and of office shall be deposited in the Dominion Lands Office.

3. The said bond shall be deposited and kept in the manner prescribed by law with regard to the bonds given for the like purposes by other public officers of the Dominion, and shall be subject to the same provisions, and shall enure to the benefit of any party sustaining damage by breach of any condition thereof; and the commission shall be registered in the office of the Registrar General of the Dominion.

20 88. The said Board may, in their discretion, suspend or Board may dismiss from the practice of his profession any Deputy Surveyor suspend or whom they may find guilty of gross negligence or corruption dismiss negli- in the execution of the duties of his office; but the Board gent or cor- shall not suspend or dismiss such Deputy Surveyor without rupt Deputy having previously summoned him to appear in order to be Surveyor. heard in his defence, nor without having heard the evidence offered either in support of the complaint, or on behalf of the Deputy Surveyor inculpated.

#### STANDARD OF MEASURE.

30 89. The measure of length used in the surveys of Dominion Standard of lands, shall be the English measure of length, and every the English Deputy Surveyor shall be in possession of a subsidiary standard measure of thereof, which subsidiary standard tested and stamped as length and correct by the Department of Inland Revenue, shall be copies thereof to be pro- furnished him by the said Department, on payment of a fee cured by of three dollars therefor; and all Deputy Surveyors shall Deputy Surveyors. from time to time regulate and verify by such standard the length of the chains and other instruments for measuring.

#### HOW TO RENEW LOST CORNERS AND OBLITERATED LINES.

40 90. In all cases when any Deputy Surveyor is employed Cases where to run any dividing line or limit between sections, or other the original legal subdivisions, or wood lots, and the mound, post or mound, post or monument, erected, marked or planted in the original survey cannot be to define the corner of such section, or other legal subdivisions, found, pro- vided for.

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or wood lot, cannot be found, he shall obtain the best evidence that the nature of the case may admit of respecting such corner mound, post or monument; but if the same cannot be satisfactorily ascertained, then he shall measure the true distance between the nearest undisputed corner mounds, posts or monuments and divide such distance into such number of sections or other legal subdivisions, or wood lots (as the case may be), as the same contained in the original survey, giving to each a breadth proportionate to that intended in such original survey, as shewn on the plan and field notes thereof of record in the Dominion Lands Office; and if any portion of the township or section line (as the case may be) on which such corner mound, post or monument was or should have been planted in the original survey, should be obliterated and lost, then the Deputy Surveyor shall renew such township or section line (as the case may be) and shall draw and define the same on the ground, in such manner as to leave each and every of the adjoining sections or other legal subdivisions (as the case may be) of a width and depth proportionate to that severally returned for such section or legal subdivision in the original survey, and shall erect, plant or place such intermediate mounds, posts or monuments as he may be required to erect, plant or place, in the line so ascertained, having due respect to any allowance for a road or roads, and the corner, or division, or limit so found shall be the true corner, or division, or limit of such section or other legal subdivision or wood lot.

#### HOW LEGAL SUBDIVISIONS ARE TO BE SURVEYED AND LAID OUT.

Method of  
proceeding to  
be adopted by  
Deputy Sur-  
veyor em-  
ployed to lay  
out a given  
half-section or  
quarter-  
section.

**91.** In all cases when a Deputy Surveyor is employed to lay out a given half section or quarter section, he shall effect the same by connecting the opposite original quarter section corners (should the same be existing, or if the same be not existing by connecting the several points in lieu thereof found in accordance with the preceding clause) by straight lines; and in laying out other and minor legal subdivisions in any quarter section, or any wood lot, he shall give such legal subdivision or wood lot, as the case may be, its proportionate share of the frontage and interior breadth of such quarter section, and connect the points so found, by a straight line; and the lines or limits so drawn as above on the ground, shall in the respective cases be the true lines or limits of such half-section or quarter section or other legal subdivision or wood lot, whether the same shall or shall not correspond with the area expressed in the respective patents for such lands.

## TO DRAW DIVISION LINES IN FRACTIONAL SECTIONS.

92. The dividing lines or limits between legal subdivisions or wood lots in fractional sections shall be drawn from the original corners (or the points representing such corners, as defined on the ground in accordance with the provisions of this Act), in the section line intended as the front of such subdivision or wood lot, at right angles to such section line.

Dividing lines  
to be drawn  
from original  
corners.

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## ORIGINAL BOUNDARY LINES.

93. All boundary lines of townships, sections, or legal subdivisions, towns, or villages, and all boundary lines of blocks, gores and commons, all section lines and governing points, all limits of lots surveyed, and all mounds, posts or monuments run and marked, erected, placed or planted at the angles of any townships, towns, villages, sections or other legal subdivisions, blocks, gores, commons and lots or parcels of land, under the authority of this Act or of any order of the Governor in Council, shall be the true and unalterable boundaries of such townships, towns and villages, sections or other legal subdivisions, blocks, gores, commons and lots or parcels of land respectively, whether the same upon admeasurement be, or be not found to contain the exact area of dimensions mentioned or expressed in any patent, grant or other instrument in respect of any such township, town, village, section or other legal subdivision, block, gore, common, lot or parcel of land.

Boundaries  
placed under  
the authority  
of this Act, or  
of any Order  
in Council to  
be deemed the  
true ones, &c.

94. Every township, section or other legal subdivision, town, village, block gore, common, lot or parcel of land, shall consist of the whole width included between the several mounds, posts, monuments or boundaries respectively so erected, marked, placed or planted as aforesaid, at the several angles thereof, and no more or less, any quantity or measure expressed in the original grant or patent thereof notwithstanding.

Townships,  
&c., to com-  
prise all the  
space included  
within their  
boundaries.

95. Every patent, grant or instrument purporting to be for any aliquot part of any section, or other legal subdivision, block, gore, common, lot or parcel of land, shall be construed to be a grant of such aliquot part of the quantity the same may contain on the ground, whether such quantity be more or less than that expressed in such patent, grant or instrument.

As to aliquot  
parts of town-  
ships, &c.

96. In every town and village in Manitoba, or the North-West Territories, which may be surveyed and laid out under the provisions of this Act, all allowances for any road, street, lane, lot or common, laid out in the original survey of such

Road allow-  
ances in  
towns, &c.,  
to be public  
highways.



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Deputy Sur-  
veyors may  
examine wit-  
nesses on  
oath.

town or village, shall be public highways and commons; and all mounds, posts or monuments, placed or planted in the original survey of such town or village, to designate or define any allowance for a road, street, lane, lot or common, shall be the true and unalterable boundaries of such road, street, lane, lot or common; and all Deputy Surveyors, employed to make surveys in such town or village, shall follow and pursue the same rules and regulations in respect of such surveys, as are by law required of them when employed to make surveys in townships.

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97. For better ascertaining the original corner or limits of any township, section or other legal subdivision, lot or tract of land, every Deputy Surveyor of Dominion lands acting in that capacity, may administer an oath or oaths to each and every person whom he may examine concerning any corner mound, post, monument or other boundary, or any original land mark, line, limit or angle, of any township section or other legal subdivision, lot or tract of land which such Deputy Surveyor is employed to survey.

## EVIDENCE BEFORE SURVEYORS.

[20

Course to be  
adopted by  
Deputy Sur-  
veyors to  
ascertain  
boundaries  
when doubt-  
ful.

*Subpœnas*  
may be issued.

98. When any Deputy Surveyor is in doubt as to the true corner, boundary or limit of any township, section, lot or tract of land which he is employed to survey and has reason to believe that any person is possessed of any important information touching such corner, boundary or limit, or of any writing, plan or document tending to establish the true position of such corner, boundary or limit, then if such person does not willingly appear before, and be examined by such Deputy Surveyor, or does not willingly produce to him such writing, plan or document, such Deputy Surveyor may apply to any Justice of the Peace for an ordinary *Subpœna* as witness, or a *Subpœna duces tecum*, as the case may require, accompanying such application by an affidavit or solemn declaration to be made before such Justice of the Peace, of the facts on which the application is founded, and such Justice may issue a *Subpœna* accordingly, commanding such person to appear before the Deputy Surveyor at a time and place to be mentioned in the *Subpœna*, and (if the case require it) to bring with him any writing, plan or document mentioned or referred to therein.

30

How sub-  
*pœnas* may be  
served.

1. Such *Subpœna* shall be served on the person named therein by delivering a copy thereof to him or by leaving the same for him with some grown person of his family at his residence, exhibiting to him or such grown person the original.

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2. If the person commanded to appear by such *Subpœna* after being paid his reasonable expenses, or having the same tendered to him, refuses or neglects to appear before the Surveyor at the place and time appointed in the *Subpœna*, or to produce the writing, plan or document (if any) therein mentioned or referred to, or to give such evidence and information as he may possess touching the boundary or limit in question, a warrant by the Justice for the arrest of such person may be issued, and he may be punished accordingly by fine not exceeding one hundred dollars, or imprisonment not exceeding ninety days, or both, in the discretion of such Justice.

Consequence of disobeying *subpœna*.

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99. All evidence taken by any Deputy Surveyor as aforesaid shall be reduced to writing and shall be read over to the person giving the same, and be signed by such person, or if he cannot write, he shall acknowledge the same as correct before two witnesses, who shall sign the same, as also the Deputy Surveyor, and such evidence shall, and any document or plan prepared and sworn to as correct before a Justice of the Peace, by any Deputy Surveyor, with reference to any survey by him performed, may be filed and kept at the Registry Office of the place in which the lands to which the same relates are situate, subject to be produced thereafter in evidence in Court.

Evidence taken by Deputy Surveyors to be reduced to writing and signed, &c.

100. Any Deputy Surveyor when engaged in the performance of his duties as such, may pass over, measure along, and ascertain the bearings of any township or section line, or other Government line, and for such purposes may pass over the lands of any person whomsoever, doing no actual damage to the property of such person.

When Deputy Surveyors may pass over private land.

#### PROTECTION TO SURVEYORS.

101. If any person in any part of the Dominion lands interrupts, molests or hinders any Deputy Surveyor, while in the discharge of his duty as a Deputy Surveyor, such person shall be guilty of a misdemeanor, and being thereof lawfully convicted in any Court of competent jurisdiction, shall be punished either by fine or imprisonment, or both, in the discretion of such Court, such imprisonment being for a period not exceeding two months, and such fine not exceeding twenty dollars, without prejudice to any civil remedy which such Deputy Surveyor or any other party may have against such offender for damages occasioned by such offence.

Penalty for molesting a Deputy Surveyor in the discharge of his duty.

102. If any person knowingly and wilfully pulls down, defaces, alters, or removes any mound, post or monument erected, planted or placed in any original survey under the

Penalty for pulling down original or

Appendix of other land-  
Statutes. marks placed  
by Surveyor.

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respecting  
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tinued.

provisions of this Act, or under the authority of any Order in Council, such person shall be deemed guilty of felony; and if any person knowingly and wilfully defaces, alters or removes any other mound or land mark, post or monument placed by any Deputy Surveyor to mark any limit, boundary or angle of any township, section or other legal subdivision, lot or parcel of land in Manitoba, or the North-West Territories, such person shall be deemed guilty of a misdemeanor, and being convicted thereof before any competent Court, shall be liable to be punished by fine or imprisonment, or both, 10 at the discretion of such Court, such fine not to exceed one hundred dollars, and such imprisonment not to be for a longer period than three months, without any prejudice to any civil remedy which any party may have against such offender or offenders for damages occasioned by reason of such offence: Provided that nothing in this Act shall extend to prevent Deputy Surveyors, in their operations, from taking up posts or other boundary marks when necessary, after which they shall carefully replace them as they were before.

Deputy Sur-  
veyors to keep  
journals and  
field notes,  
and furnish  
copies to  
parties con-  
cerned.

**103.** Every Deputy Surveyor shall keep exact and regular 20  
journals and Field Notes of all his surveys of Dominion lands, and file them in the order of time in which the surveys shall have been performed, and shall give copies thereof to the parties concerned when so required, for which he is hereby allowed the sum of one dollar for each copy, if the number of words therein do not exceed four hundred; but if the number of words therein exceed four hundred, he is allowed ten cents additional for every hundred words over and above four hundred words.

Allowance to  
Deputy Sur-  
veyor for  
attendance as  
a witness.

**104.** There shall be allowed to every Deputy Surveyor 30  
summoned to attend any Court, civil or criminal, for the purpose of giving evidence in his professional capacity as a Surveyor, for each day he so attends (in addition to his reasonable travelling and living expenses), and to be taxed and paid in the manner by law provided, with regard to the payment of witnesses attending such Court, five dollars.

#### GENERAL PROVISIONS.

Governor in  
Council may  
withdraw In-  
dian Reserves  
and half-  
breed lands  
from the  
operation of  
this Act, and  
may alter

**105.** The Governor in Council shall, at any time hereafter, subject to then existing rights, as defined or created under this Act, withdraw from the operation of this Act, such lands as 40  
have been reserved for Indians or may be required to satisfy the Half Breeds claims created under section 31 of the Act 33 Victoria, chapter 3, and also land to such extent as may be required for Railway purposes, and further, may, from time to time, make such Orders as he may deem necessary to carry out the provisions of this Act according to their true



intent, or to meet any cases which may arise and for which no provision is made by this Act, and may, from time to time, alter or revoke the same and make others in their stead, and such Orders shall be published in the *Canada Gazette*, and in such newspapers as the Secretary of State may direct, and shall be laid before Parliament within the first ten days of the session next after the date thereof.

price of lands and terms of sale and settlement thereof. Appendix of Statutes. No. 31.

An Act respecting the Public Lands of the Dominion, 14th April 1872—continued.

Before whom affidavits, &c., may be taken.

106. All affidavits, oaths, solemn declarations or affirmations required to be taken or made under this Act may be taken before the Judge or Clerk of any County or Circuit Court, or any Justice of the Peace, or any Commissioner for taking affidavits, or any Dominion Lands Agent or Officer, or any person specially authorized to take such affidavits by the Secretary of State.

107. In any case where an affidavit or oath is required by this Act, a solemn affirmation may be administered and made instead of an oath, by any person who is by law permitted in civil cases to make a solemn affirmation instead of taking an oath.

Affirmations in lieu of oaths.

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#### PREVIOUS ORDERS IN COUNCIL.

108. All proceedings properly taken under the respective Orders in Council on the subject of the *Public Lands in the Province of Manitoba*, dated the twenty-fifth of April, one thousand eight hundred and seventy-one, and the twenty-sixth of May following the said date, are hereby confirmed, and the said respective orders, (except such of the provisions thereof as may be inconsistent with the provisions of this Act and which are hereby revoked), shall be and remain in force.

Orders in Council of 25th April, 1871, and 26th May, 1871, confirmed.

30

(Schedules not printed)

#### No. 32.

##### Excerpts from an Act to amend the Dominion Lands Act (37 Vict., Chap. 19).

(Assented to 26th May, 1874.)

In amendment of "The Dominion Lands Act," Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Section fourteen of "The Dominion Lands Act," passed in the thirty-fifth year of Her Majesty's reign, chapter twenty-three is hereby amended by inserting after the word "the," where it occurs the first time in the said section, the words "township subdivision."

No. 32. Excerpts from an Act to amend the Dominion Lands Act, 26th May 1874.

Appendix of  
Statutes.

No. 32.  
Excerpts  
from an Act  
to amend  
the Do-  
minion  
Lands Act,  
26th May  
1874—con-  
tinued.

2. The sub-section of the fifteenth section of the said Act, numbered one, is hereby amended by adding at the end thereof after the words "half-quarter section or eighty acres," the words "a quarter-quarter section or forty acres."

3. Section eighteen of the said Act is hereby repealed, and the following is substituted in lieu of, and shall be read as the said eighteenth section :—

"18. Provided that the Company's one-twentieth of the lands in fractional townships shall be satisfied out of one, or other, or both, as the case may be, of the sections nos. eight and twenty-six as above, in such fractional townships, the allotment thereof to be effected by the Minister of the Interior and the said Company, or some person duly authorized by them respectively."

4. Section twenty of the said Act is hereby amended by adding the following sub-section at the end thereof :

"2. Provided further, that one-twentieth of the revenue derived from timber limits which may be granted in unsurveyed territory within the fertile belt, as hereinafter provided, shall be annually, so long as the townships comprised in the same remain unsurveyed, paid and accounted for to the Company,—such one-twentieth to cease or to be diminished in proportion as the townships comprised in such limits, or any of them, may be surveyed, in which event, the Company shall receive their one-twentieth interest in the lands in such townships in sections eight and twenty-six as hereinbefore enacted: Provided, nevertheless, that on such sections being surveyed as aforesaid, should the same or either of them prove to have been denuded of timber by the lessee, to the extent of one-half or more, then, in such case the Company shall not be bound to accept such section or sections so denuded, and shall have the right to select a section or sections to an equal extent in lieu thereof from any unoccupied lands in such township."

.....

9. Section forty-four of the said hereinbefore first cited Act is hereby repealed, and the following is substituted for and shall be read as the said section forty-four :—

"44. The Minister of the Interior shall have power to protect any person or persons desiring to carry on coal mining in unsurveyed territory, in the possession of the lands on which such mining may be carried on,—provided, that before entering on the working of such mines, such person or persons make written application to the local agent to purchase such land; such application must be accompanied by a description by a deputy surveyor setting forth generally the situation and the

dimensions of such land, and shall also be accompanied by payment of the price thereof, estimating the number of acres (which shall not exceed six hundred and forty) at the rate of one dollar per acre. Such application shall be filed by the agent receiving the same—and on the survey of the township containing the land applied for being effected, the claimant or claimants shall be entitled to a patent for such number of acres, in legal subdivisions, including and covering the mine worked, as shall correspond to the application and to the extent of land paid for :

“ Provided that all operations under this section shall be subject to the rights of the Hudson’s Bay Company to sections 8 and 26 as hereinbefore enacted : Provided further, that the survey of the township within which such land may be situate, shall not be delayed beyond a period of five years after the date of the purchase of such land, without the consent of the Hudson’s Bay Company thereto first had and obtained :

“ Provided further that such mine shall have been continuously worked, to the satisfaction of the Minister of the Interior during the interim between the application and the survey ; but if the same should at any time during such interim cease to be worked for twelve consecutive months, unless the lands in question be no longer valuable for mining purposes, then the claim of the parties to the land shall lapse, and the mine shall be forfeited to the Crown, together with any and all purchase money which may have been paid to the Government on account thereof.”

### No. 33.

Excerpts from an Act to Amend and Consolidate the several Acts respecting the Public Lands of the Dominion (42 Vict. (1879), Chap. 31).

(Assented to 15th May 1879.)

WHEREAS it is expedient with a view to the proper and efficient administration and management of certain of the public lands of the Dominion, that the same should be regulated by statute, and divers Acts have been passed for that purpose which it is expedient to amend and consolidate : Therefore Preamble. Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :

1. This Act shall apply exclusively to the Lands included in Manitoba and the several Territories of the Dominion, which lands shall be styled and known as *Dominion Lands* ; and this Act shall be known and may be cited as the “ *Dominion Lands Act, 1879*,” and the following terms and expressions therein

Appendix of Statutes.

No. 32.  
Excerpts from an Act to amend the Dominion Lands Act, 26th May 1874—continued.

No. 33.  
Excerpts from an Act to amend and consolidate the several Acts respecting the Public Lands of the Dominion, 15th May 1879.



Appendix of  
Statutes.

No. 33.

Excerpts  
from an Act  
to amend  
and con-  
solidate the  
several Acts  
respecting  
the Public  
Lands of the  
Dominion,  
15th May  
1879—con-  
tinued.

"Dominion  
Land Sur-  
veyor."

"Crown  
Timber  
Agent."

"Island."

"Belt."

"Section."

"Sub-sec-  
tion."

"Canada  
Gazette."

shall be held to have the meaning hereinafter assigned them, unless such meaning be repugnant to the subject or inconsistent with the context, that is to say :

1. The term *Minister of the Interior*, means the Minister of the Interior of Canada :

2. The term *Surveyor-General* means the said officer, or in his absence, the chief clerk performing his duties for the time being :

3. The term *Agent* or *Officer* means any person or officer employed in connection with the administration and management, sale or settlement of Dominion Lands; and the term *Local Agent* means the Agent for Dominion lands employed as aforesaid, with respect to the lands in question; and the term *Land Office* means the office of any such Agent : 10

4. The term *Dominion Land Surveyor* means a Surveyor duly authorized under the provisions of this Act to survey Dominion lands :

5. The term *Crown Timber Agent* means the local officer appointed to collect dues and to perform such other duties as may be assigned to such officer, in respect to the timber on Dominion lands : 20

6. The term *Island*, as used in connection with timber, means an isolated grove or clump of timber in Prairie :

7. The term *Belt*, as used in connection with timber, means a strip of timber along the shore of a lake, river or water course :

8. The term *Section* means a section of this Act distinguished by a separate number, and the term *Sub-section* means a subdivision of any clause distinguished by a separate number or letter, in smaller type :

9. The term *Canada Gazette* means the official Gazette of the Government, published at Ottawa : 30

.....

## DISPOSAL OF THE DOMINION LANDS.

### LANDS RESERVED BY THE HUDSON'S BAY COMPANY.

Recital.

17. Whereas by article five of the terms and conditions in the deed of surrender from the Hudson's Bay Company to the Crown, the said Company is entitled to one-twentieth of the lands surveyed into townships in a certain portion of the territory surrendered, described and designated as the "Fertile Belt" :

And whereas by the terms of the said deed, the right to claim the said one-twentieth is extended over the period of fifty years, and it is provided that the lands comprising the same shall be determined by lot; and whereas the said Company and the Government of the Dominion have mutually agreed that with a view to an equitable distribution throughout the territory described, of the said one-twentieth of the lands, and in order further to simplify the setting apart thereof, certain sections or parts of sections, alike in numbers and position in each township throughout the said territory, shall, as the townships are surveyed, be set apart and designated to meet and cover such one-twentieth:

And whereas it is found by computation that the said one-twentieth will be exactly met, by allotting in every fifth township two whole sections of six hundred and forty acres each, and in all other townships one section and three quarters of a section each, therefore—

In every fifth township in the said territory; that is to say: in those townships numbered, 5, 10, 15, 20, 25, 30, 35, 40, 45, 50, and so on in regular succession northerly from the international boundary, the whole of sections Nos. 8 and 26, and in each and every of the other townships, the whole of section No. 8, and the south half and north-west quarter of section 26 (except in the cases hereinafter provided for) shall be known and designated as the lands of the said Company.

18. Provided that the Company's one-twentieth of the lands in fractional townships shall be satisfied out of one, or other, or both, as the case may be, of the sections numbers eight and twenty-six as above, in such fractional townships,—the allotment thereof to be effected by the Minister of the Interior and the said Company, or some person duly authorized by them respectively.

19. Provided further, that on the survey of a township being effected, should the sections so allotted, or any of them, or any portion of them, be found to have been *bona fide* settled on under the authority of any Order in Council, or of this Act, then if the Company forego their right to the sections settled upon as aforesaid, or any one or more of such sections, they shall have the right to select a quantity of land equal to that so settled on, and in lieu thereof, from any lands then unoccupied.

20. Provided also, as regards the sections and parts of sections as mentioned in clause seventeen, that where the same may be situate in any township withdrawn from settlement and sale, and held as timber lands under the provisions hereinafter contained, the same shall form no part of the timber limit or

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No. 33.  
Excerpts  
from an Act  
to amend  
and con-  
solidate the  
several Acts  
respecting  
the Public  
Lands of the  
Dominion,  
15th May  
1879—con-  
tinued.

Certain sections  
and parts of  
sections in cer-  
tain townships  
to be known as  
Hudson's Bay  
Company's  
lands.

The Com-  
pany's one-  
twentieth in  
fractional  
townships.

Company may  
select land in  
lieu of allotted  
land found to  
be settled  
upon under  
authority.

Company's  
lands to form  
no part of  
timber limits.

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Statutes.

No. 33.  
Excerpts  
from an Act  
to amend  
and con-  
solidate the  
several Acts  
respecting  
the Public  
Lands of  
the Do-  
minion,  
15th May  
1879—con-  
tinued.

The Company  
to be paid one-  
twentieth of  
the revenues  
from timber  
limits in un-  
surveyed  
territory  
within the  
fertile belt.  
  
Proviso : as  
to lands  
denuded of  
timber.  
(1872 & 1874).

limits included in such township, but shall be held to be the property of the Company :

2. Provided further, that one-twentieth of the revenue derived from timber limits which may be granted in unsurveyed territory within the fertile belt, as hereinafter provided shall be annually, so long as the townships comprised in the same remain unsurveyed, paid and accounted for to the Company, such one-twentieth to cease or to be diminished in proportion as the townships comprised in such limits, or any of them, may be surveyed,—in which event the Company shall receive their one-twentieth interest in the lands in such townships in sections eight and twenty-six as hereinbefore enacted : Provided, nevertheless, that on such sections being surveyed as aforesaid, should the same or either of them prove to have been denuded of timber by the lessee, to the extent of one-half or more, then, in such case the Company shall not be bound to accept such section or sections so denuded, and shall have the right to select a section or sections to an equal extent in lieu thereof from any unoccupied lands in such township.

Title to lands  
to pass to  
Company  
without  
Patent in  
certain cases,  
and under  
Patents in  
other cases.

21. As townships are surveyed and the respective surveys thereof confirmed, or as townships or parts of townships are set apart and reserved from sale as timber lands, the Governor of the said Company shall be duly notified thereof by the Surveyor-General, and thereupon this Act shall operate to pass the title in fee simple in the sections or three-quarter parts of sections to which the Company will be entitled under clause seventeen, as aforesaid, and to vest the same in the said Company, without requiring a patent to issue for such lands; and as regards the lands set apart by lot, and those selected to satisfy the one-twentieth in townships other than the above, as provided in clauses eighteen and nineteen, returns thereof shall be made in due course by the local agent or agents to the Dominion Lands Office, and patents shall issue for the same accordingly.

Mines or  
minerals not to  
be reserved in  
patents of lands.

37. No reservation of gold, silver, iron, copper, or other mines or minerals shall be inserted in any patent from the Crown granting any portion of the Dominion lands.

Any persons  
may explore  
and purchase  
mining lands.

38. Any person or persons may explore for mines or minerals on any of the Dominion lands, surveyed or unsurveyed, and not then marked or staked out and claimed or occupied, and may, subject to the provisions hereinafter contained, purchase the same.



39. Mining lands, if in surveyed townships, may be acquired under the provisions herein contained, and shall be sold in legal subdivisions: when situate in unsurveyed territory and without the limits of the Fertile Belt, such lands shall be sold in blocks to be called mining locations; and every such mining location, except as hereinafter provided, shall be bounded by lines due north and south and due east and west, astronomically; and each such location shall correspond with one of the following dimensions, namely,  
 10 eighty chains in length by forty in width, containing three hundred and twenty acres,—or forty chains square, containing one hundred and sixty acres,—or forty chains in length by twenty in width, containing eighty acres:

Mining lands in surveyed townships to be sold in legal subdivisions. Those in unsurveyed territory, without the limits of the Fertile Belt, to be sold in blocks, to be called mining locations. Description of such blocks.

Appendix of Statutes.

No. 33. Excerpts from an Act to amend and consolidate the several Acts respecting the Public Lands of the Dominion, 15th May 1879—continued.

1. Provided further that in case of certain lands proving to be rich in minerals, the Minister of the Interior shall have the power to withdraw such lands from sale, and in lieu thereof institute a system of lease:

Proviso: as to rich mineral lands.

2. The rent payable to the Crown under any such lease shall be a royalty, not to exceed two and a-half per cent on the net profits of working:

Proviso for rent.

3. Provided further, that when there are two or more applicants for the same tract, and a prior right in either or any of the applicants is not established to the satisfaction of the Minister of the Interior, the same may be tendered for by the claimants on stated terms of lease, and sold to the highest bidder:

Proviso: sale when no prior right.

4. Provided also that in territory supposed to contain minerals the Minister of the Interior may in his discretion reserve from sale, alternate locations, or quarter-sections, or other legal subdivisions with the view of subsequently offering the same either for sale or lease at public competition.

Further provision for reservation.

40. Mining locations in unsurveyed territory shall be surveyed by a Dominion Land Surveyor, and shall be connected with some known point in previous surveys, or with some other known point or boundary (so that the tract may be laid down on the maps of the territory in the Dominion Lands Office) at the cost of the applicants, who shall be required to furnish, with their application, the surveyor's plan, field notes and descriptions thereof.

Mining locations to be surveyed.

41. No distinction in price shall be made between lands supposed to contain mines or minerals and farming lands, but both classes shall be sold at the uniform price of one dollar per acre; provided that section thirty of this Act as regards offering lands at public sale shall apply to coal and mineral lands also, when the same are in surveyed townships.

Lands supposed to contain minerals, to be sold at the same price as farming lands. Proviso.

Appendix of Exemption of  
Statutes. certain lands  
— from pre-  
No. 33. ceding provi-  
Excerpts sions.  
from an Act Governor in  
to amend Council to  
and con- regulate.  
solidate the  
several Acts  
respecting  
the Public-  
Lands of  
the Do-  
minion,  
15th May  
1879—con-  
tinued.

42. It shall also be lawful for the Minister of the Interior to exempt from the preceding provisions of this Act, such of the Dominion lands upon or adjoining the banks of rivers or other waters as may be supposed to contain valuable "Bar," "Bench," or "Dry" "Diggings" for gold or other precious metals; and the Governor in Council shall regulate, from time to time, as the same may become necessary and expedient, the nature and size of the claims containing such diggings, and shall fix the terms and conditions upon which the same shall be held and worked, and the royalty payable in respect thereof, and shall appoint and prescribe the duties of such officers as may be necessary to carry out such regulations. 10

#### INDIAN TITLE.

As to lands  
still under  
Indian title.

43. None of the provisions of this Act respecting the settlement of agricultural lands, or the lease of timber lands or the purchase and sale of mineral lands, shall be held to apply to territory the Indian title to which shall not at the time have been extinguished.

#### COAL LANDS.

Excepted  
from home-  
stead claims.

44. Coal lands designated by the Government as such are hereby withdrawn from the operation of this Act as regards the rights of squatters to homesteads on the Dominion lands in advance of the surveys. 20

Provision as  
to working  
coal mines.

45. The Minister of the Interior shall have power to protect any person or persons desiring to carry on coal mining in unsurveyed territory, in the possession of the lands on which such mining may be carried on,—provided, that before entering on the working of such mines, such person or persons make written application to the local agent to purchase such land; such application must be accompanied by a description by a Dominion Land Surveyor, setting forth generally the situation and the dimensions of such land, and shall also be accompanied by payment of the price thereof, estimating the number of acres (which shall be in the discretion of the Minister, but shall in no case exceed three hundred and twenty) at the rate of one dollar per acre. Such application shall be filed by the agent receiving the same—and on the survey of the township containing the land applied for being effected, the claimant or claimants shall be entitled to a patent for such number of acres, in legal subdivisions, including and covering the mine worked, as shall correspond to the application and to the extent of land paid for : 30 40

Filing applica-  
tion.

Patent.  
(1874.)

Provided that all operations under this section shall be subject to the rights of the Hudson's Bay Company to sections 8 and 26 as hereinbefore enacted: Provided further, that the survey of the township within which such land may be situate, shall not be delayed beyond a period of five years after the date of the purchase of such land, without the consent of the Hudson's Bay Company thereto first had and obtained:

10 Provided further that such mine shall have been continuously worked, to the satisfaction of the Minister of the Interior, during the interim between the application and the survey; but if the same should at any time during such interim cease to be worked for twelve consecutive months, unless the lands in question be no longer valuable for mining purposes, then the claim of the parties to the land shall lapse, and the mine shall be forfeited to the Crown, together with any and all purchase money which may have been paid to the Government on account thereof.

20 NOTE.—The date in the margin opposite any provision, is the year in which it was made, by this Act (1879), or by an Act amending that of 1872 and repealed by section 129 of this Act, when there is no date mentioned, the provision is part of the Act 35 V., c. 23 (1872).

#### No. 34.

Excerpts from an Act to Amend the "Dominion Lands Act, 1879 (43 Vict., Chapter 26).

*Assented to 7th May, 1880.*

30 In amendment of the "Dominion Lands Act, 1879:" Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

.....

6. Sections thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-four, forty-five, and forty-six are hereby repealed, and the following section is substituted for the said sections so repealed:—

40 "Lands containing coal or other minerals, whether in surveyed or unsurveyed territory, shall not be subject to the provisions of this Act respecting sale or homestead, but shall be disposed of in such manner and on such terms and conditions as may, from time to time, be fixed by the Governor in Council,

Proviso: as to Appendix of Statutes.  
H. B. Co.  
Further proviso. (1874.)  
Proviso for continuous working. (1874.)  
No. 33.  
Excerpts from an Act to amend and consolidate the several Acts respecting the Public Lands of the Dominion, 15th May 1879—continued.

No. 34.  
Excerpts from an Act to amend the Dominion Lands Act, 1879.



Appendix of  
Statutes.

No. 34.  
Excerpts  
from an Act  
to amend  
the Do-  
minion  
Lands Act,  
1879—con-  
tinued.

by regulations to be made in that behalf,—which regulations shall not go into operation until after they shall have been published for four successive weeks in the *Canada Gazette*, and laid before both Houses of Parliament for thirty days without disapproval by either House."

7. Section fifty-two of the said Act is hereby amended by adding to subsection seven thereof, the following words :—

"Provided that such lease shall be subject to the right of the Government to deal with any and all coal and other minerals which may be found in the land described therein, in accordance with the provisions of this Act and the regulations to be made under it by the Governor in Council, respecting lands containing coal or other minerals : "

10

And the said proviso shall operate retrospectively, that is to say, it shall apply to the several leases of timber heretofore granted under the said Act, as if it had been contained in the said Act when it was passed :

2. The said section is hereby also amended by the further addition to the said subsection seven of the following words :—

"Provided further, that the Government shall have the right in dealing, as above provided, with any coal or other minerals in lands leased as timber limits, to authorize the persons to whom such coal or other minerals may be granted, to take possession of and occupy such extent of the land so leased as may be necessary to work such coal or other minerals, and to open necessary roads through any such timber limit, paying the lessee of the limit the value of any and all timber necessarily cut in connection with or by reason of such workings or roads ; "

20

And this amendment shall be construed with reference to the amendment to the said Act made by the next preceding section of this Act, as if the provisions thereby made had been contained in the said Act when it was passed.

30

No. 35.  
Excerpt  
from the  
Dominion  
Lands Act,  
25th May  
1883.

#### No. 35.

**Excerpt from the Dominion Lands Act, 1883 (46 Victoria, Chap. 17).**

43. It is hereby declared that no grant from the Crown of lands in freehold or for any less estate has operated or will operate as a conveyance of the gold and silver mines therein unless the same are expressly conveyed in such grant.

## No. 36.

## Excerpts from an Act respecting Public Lands (R.S.C. 1886, Chap. 54).

Appendix of  
Statutes.No. 36.  
Excerpts  
from an Act  
respecting  
Public  
Lands, 1886.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as “The Dominion Lands Act, 46 V., c. 17, s. 1, part.

2. . . . .

(f) The expression “clause” means a section of this Act, or of any Act herein cited, distinguished by a separate number; and the expression “sub-clause” means a subdivision of any clause distinguished by a separate number or letter in smaller type;

(g) The expression “Dominion Lands” means any lands to which this Act applies.

3. Except as provided by any other Act of the Parliament of Canada, this Act applies exclusively to the public lands included in Manitoba and the several territories of Canada. 46 V., c. 17, s. 1, part.

.....

*Lands Reserved by the Hudson's Bay Company.*

20 22. In every fifth township in the territory surrendered to the Crown by the Hudson's Bay Company, and described and designated as the “fertile belt,” that is to say: in those townships numbered five, ten, fifteen, twenty, twenty-five, thirty, thirty-five, forty, forty-five, fifty, and so on in regular succession northerly from the International boundary, the whole of sections numbers eight and twenty-six, and in each and every of the other townships, the whole of section number eight, and the south half and north-west quarter of section number twenty-six, except in the cases hereinafter provided for, shall be known and designated as the lands of the said company:

30 2. The company's one-twentieth of the lands in fractional townships shall be satisfied out of one or other or both, as the case may be, of the sections numbers eight and twenty-six as above, in such fractional townships, and the allotment thereof shall be effected by the Minister and the said company, or by some person duly authorized by them respectively:

40 3. If, when the survey of a township is effected, the sections so allotted, or any of them, or any portion of them, are found to have been *bona fide* settled on under the authority of any Order in Council, or of this Act, the company may, if it foregoes its right to the sections settled upon as aforesaid, or any one or

Certain sections and parts of sections in certain townships to be Hudson's Bay Company's lands.

Company's lands in fractional townships.

Company may select lands in lieu of any found settled upon by authority.

Appendix of  
Statutes.

No. 36. Company's  
Excerpts lands not to  
from an Act be included in  
respecting timber limits.  
Public  
Lands, 1886  
—continued.

Company to  
have one-  
twentieth of  
revenue from  
timber limits  
in unsurveyed  
lands in fer-  
tile belt.

As to lands  
found de-  
nuded of  
timber.

Title to lands  
to pass to  
company  
without  
patent in cer-  
tain cases.

Issue of  
patents in  
other cases,

Mineral and  
coal lands to  
be disposed of  
under Order  
in Council.

more of such sections, select a quantity of land equal to that so settled on, and in lieu thereof from any lands then unoccupied :

4. When the sections and parts of sections above mentioned, are situate in any township withdrawn from settlement and sale, and held as timber lands under the provisions hereinafter contained, the same shall form no part of the timber limit or limits included in such township, but shall be the property of the company.

5. One-twentieth of the revenue derived from timber limits granted in unsurveyed territory within the fertile belt, as hereinafter provided, shall, so long as the townships comprised in the same remain unsurveyed, be annually paid and accounted for to the company; but such one-twentieth shall cease or be diminished in proportion as the townships comprised in such limits, or any of them, are surveyed; and in such case the company shall receive their one-twentieth interest in the lands in such townships in sections eight and twenty-six, as hereinbefore provided ; 10

6. If the said sections, or either of them, when surveyed as aforesaid, prove to have been denuded of timber by the lessee, to the extent of one-half or more, the company shall not be bound to accept such section or sections so denuded, and shall be entitled to select a section or sections of an equal extent, in lieu thereof, from any unoccupied lands in the township ; 20

7. As townships are surveyed, and the respective surveys thereof are confirmed or as townships or parts of townships are set apart and reserved from sale as timber lands, the Governor of the company shall be duly notified thereof by the Minister, and thereupon this Act shall operate to pass the title in fee simple in the sections or three-quarter parts of sections to which the company is entitled under this clause, as aforesaid, and to vest the same in the company, without the issue of a patent for such lands; and as regards the lands set apart by allotment, and those selected to satisfy the one-twentieth in townships other than the above, as provided in sub-clauses two and three of this clause, returns thereof shall be made in due course by the local agent or agents, to the Dominion lands office, and patents shall issue for the same accordingly. 46 V., c. 17, s. 18. 30

.....

47. Lands containing coal or other minerals, whether in surveyed or unsurveyed territory, shall not be subject to the provisions of this Act respecting sale or homestead entry, but shall be disposed of in such manner and on such terms and conditions as are, from time to time, fixed by the Governor in Council, by regulations made in that behalf, 46 V., c. 17, s. 42. 40



48. No grant from the Crown of lands in freehold or for any less estate, shall be deemed to have conveyed or to convey the gold or silver mines therein, unless the same are expressly conveyed in such grant. 46 V., c. 17, s. 43.

Gold or silver mines not to pass by grant of land containing them.

Appendix of Statutes.

No. 36.

Excerpts from an Act respecting Public Lands, 1886 —continued.

49. Every discoverer of minerals upon surveyed or unsurveyed lands, or his assigns and associates, who had applied for a grant of such lands before the passing of the Act passed in the forty-third year of Her Majesty's reign, chapter twenty-six shall be held to have the same rights as if that Act had not been passed. 46 V., c. 17, s. 44.

Rights of discoverers of minerals.

### No. 37.

#### Excerpts from the Alberta Act (4 and 5 Edward VII, Chapter 3).

An Act to establish and provide for the Government of the Province of Alberta.

(Assented to 20th July, 1905.)

No. 37.  
Excerpts from the Alberta Act, 20th July 1905.

WHEREAS in and by the *British North America Act*, 1871, being chapter 28 of the Acts of the Parliament of the United Kingdom, passed in the session thereof held in the 34th and 35th years of the reign of Her late Majesty Queen Victoria, it is enacted that the Parliament of Canada may from time to time establish new provinces in any territories forming for the time being part of the Dominion of Canada but not included in any province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such province, and for the passing of laws for the peace, order and good government of such province, and for its representation in the said Parliament of Canada;

And whereas it is expedient to establish as a province the territory hereinafter described, and to make provision for the government thereof and the representation thereof in the Parliament of Canada: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as *The Alberta Act*.

2. The territory comprised within the following boundaries, that is to say,—commencing at the intersection of the international boundary dividing Canada from the United States of America by the fourth meridian in the system of Dominion lands surveys; thence westerly along the said international boundary to the eastern boundary of the province of British

Appendix of  
Statutes.

No. 37.  
Excerpts  
from the  
Alberta Act,  
20th July  
1905—con-  
tinued.

Columbia; thence northerly along the said eastern boundary of the province of British Columbia to the north-east corner of the said province; thence easterly along the parallel of the sixtieth degree of north latitude to the fourth meridian in the system of Dominion lands surveys as the same may be hereafter defined in accordance with the said system; thence southerly along the said fourth meridian to the point of commencement,—is hereby established as a province of the Dominion of Canada, to be called and known as the province of Alberta.

3. The provisions of *The British North America Acts*, 1867 to 1886, shall apply to the province of Alberta in the same way and to the like extent as they apply to the provinces heretofore comprised in the Dominion, as if the said province of Alberta had been one of the provinces originally united, except in so far as varied by this Act and except such provisions as are in terms made, or by reasonable intendment, may be held to be specially applicable to or only to affect one or more and not the whole of the said provinces. 10

.....

20. Inasmuch as the said province will not have the public land as a source of revenue, there shall be paid by Canada to the province by half-yearly payments, in advance, an annual sum based upon the population of the province as from time to time ascertained by the quinquennial census thereof, as follows:— 20

The population of the said province being assumed to be at present two hundred and fifty thousand, the sum payable until such population reaches four hundred thousand, shall be three hundred and seventy-five thousand dollars;

Thereafter, until such population reaches eight hundred thousand, the sum payable shall be five hundred and sixty-two thousand five hundred dollars; 30

Thereafter, until such population reaches one million two hundred thousand, the sum payable shall be seven hundred and fifty thousand dollars;

And thereafter the sum payable shall be one million one hundred and twenty-five thousand dollars.

2. As an additional allowance in lieu of public lands, there shall be paid by Canada to the province annually by half-yearly payments, in advance, for five years from the time this Act comes into force, to provide for the construction of necessary public buildings, the sum of ninety-three thousand seven hundred and fifty dollars. 40

21. All Crown lands, mines and minerals and royalties incident thereto, and the interest of the Crown in the waters

within the province under *The North-west Irrigation Act, 1898*, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, subject to the provisions of any Act of the Parliament of Canada with respect to road allowances and roads or trails in force immediately before the coming into force of this Act, which shall apply to the said province with the substitution therein of the said province for the North-west Territories.

Appendix of  
Statutes.

No. 37.  
Excerpts  
from the  
Alberta Act,  
20th July  
1905—con-  
tinued.

23. Nothing in this Act shall in any way prejudice or  
10 affect the rights or properties of the Hudson's Bay Company  
as contained in the conditions under which that company  
surrendered Rupert's Land to the Crown.

25. This Act shall come into force on the first day of  
September, one thousand nine hundred and five.

#### No. 38.

Excerpts from the Saskatchewan Act (4-5 Edward VII, Chapter 42).

An Act to establish and provide for the Government of the  
Province of Saskatchewan.

(Assented to 20th July, 1905.)

No. 38.  
Excerpts  
from the  
Saskatche-  
wan Act,  
20th July  
1905.

20 WHEREAS in and by *The British North America Act, 1871*,  
being chapter 28 of the Acts of the Parliament of the United  
Kingdom passed in the session thereof held in the 34th and  
35th years of the reign of her late Majesty Queen Victoria,  
it is enacted that the Parliament of Canada may from time  
to time establish new provinces in any territories forming  
for the time being part of the Dominion of Canada, but not  
included in any province thereof, and may, at the time of  
such establishment, make provision for the constitution and  
administration of any such province, and for the passing of  
30 laws for the peace, order and good government of such province  
and for its representation in the said Parliament of Canada;

And whereas it is expedient to establish as a province  
the territory hereinafter described, and to make provision  
for the government thereof and the representation thereof  
in the Parliament of Canada: Therefore His Majesty, by and  
with the advice and consent of the Senate and House of  
Commons of Canada, enacts as follows:—

1. This Act may be cited as *The Saskatchewan Act*.

2. The territory comprised within the following boundaries,  
40 that is to say,—commencing at the intersection of the inter-



Appendix of  
Statutes.

No. 38.  
Excerpts  
from the  
Saskatche-  
wan Act,  
20th July  
1905—con-  
tinued.

national boundary dividing Canada from the United States of America by the west boundary of the province of Manitoba, thence northerly along the said west boundary of the province of Manitoba to the north-west corner of the said province of Manitoba; thence continuing northerly along the centre of the road allowance between the twenty-ninth and thirtieth ranges west of the principal meridian in the system of Dominion lands surveys, as the said road allowance may hereafter be defined in accordance with the said system, to the second meridian in the said system of Dominion lands surveys, as the same may hereafter be defined in accordance with the said system; thence northerly along the said second meridian to the sixtieth degree of north latitude; thence westerly along the parallel of the sixtieth degree of north latitude to the fourth meridian in the said system of Dominion lands surveys, as the same may be hereafter defined in accordance with the said system; thence southerly along the said fourth meridian to the said international boundary dividing Canada from the United States of America; thence easterly along the said international boundary to the point of commencement,—is hereby established as a province of the Dominion of Canada, to be called and known as the province of Saskatchewan. 10 20

3. The provisions of the British North America Acts, 1867 to 1886, shall apply to the province of Saskatchewan in the same way and to the like extent as they apply to the provinces heretofore comprised in the Dominion, as if the said province of Saskatchewan had been one of the provinces originally united, except in so far as varied by this Act and except such provisions as are in terms made, or by reasonable intendment may be held to be, specially applicable to or only to affect one or more and not the whole of the said provinces. 30

.....

20. Inasmuch as the said province will not have the public land as a source of revenue, there shall be paid by Canada to the province by half-yearly payments, in advance, an annual sum based upon the population of the province as from time to time ascertained by the quinquennial census thereof, as follows:—

The population of the said province being assumed to be at present two hundred and fifty thousand, the sum payable until such population reaches four hundred thousand, shall be three hundred and seventy-five thousand dollars; 40

Thereafter, until such population reaches eight hundred thousand, the sum payable shall be five hundred and sixty-two thousand five hundred dollars;

Thereafter, until such population reaches one million two hundred thousand, the sum payable shall be seven hundred and fifty thousand dollars;

And thereafter the sum payable shall be one million one hundred and twenty-five thousand dollars.

2. As an additional allowance in lieu of public lands, there shall be paid by Canada to the province annually by half-yearly payments, in advance, for five years from the time this Act comes into force, to provide for the construction  
10 of necessary public buildings, the sum of ninety-three thousand seven hundred and fifty dollars.

21. All Crown lands, mines and minerals and royalties incident thereto, and the interest of the Crown in the waters within the province under *The North-west Irrigation Act, 1898*, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, subject to the provisions of any Act of the Parliament of Canada with respect to road allowances and roads or trails in force immediately before the coming into force of this Act,  
20 which shall apply to the said province with the substitution therein of the said province for the North-west Territories.

23. Nothing in this Act shall in any way prejudice or affect the rights or properties of the Hudson's Bay Company, as contained in the conditions under which that company surrendered Rupert's Land to the Crown.

25. This Act shall come into force on the first day of September, one thousand nine hundred and five.

#### No. 39.

Excerpts from an Act respecting Public Lands (R.S.C. 1906, Chap. 55).

30 1. This Act may be cited as the Dominion Lands Act.

2. ....

(f) 'Dominion lands' means any lands to which this Act applies.

81. In every fifth township in the territory surrendered Certain sec-  
to the Crown by the Hudson's Bay Company, and described tions and  
and designated as the fertile belt, that is to say: in those parts of sec-  
townships numbered five, ten, fifteen, twenty, twenty-five, tions to be  
thirty, thirty-five, forty, forty-five, fifty, and so on in regular Company's  
lands.

Appendix of  
Statutes.

No. 38.  
Excerpts  
from the  
Saskatche-  
wan Act,  
20th July  
1905—con-  
tinued.

No. 39.  
Excerpts  
from an Act  
respecting  
Public  
Lands, 1906.

Appendix of  
Statutes.

No. 39.  
Excerpts  
from an Act  
respecting  
Public  
Lands, 1906  
—continued.

Company's  
lands in  
fractional  
townships.

Company may  
select lands in  
lieu of any  
found settled  
upon.

Company's  
lands not to  
form part of  
timber limits.

Company to  
share in re-  
venue from  
timber limits  
in unsurveyed  
land.

As to lands  
found de-  
nuded of  
timber.

succession northerly from the international boundary, the whole of sections numbers eight and twenty-six and in each and every of the other townships, the whole of section number eight and the south half and northwest quarter of section number twenty-six, except in the cases hereinafter provided for, shall be known and designated as the lands of the said company.

82. The company's one-twentieth of the lands in fractional townships shall be satisfied out of one or other or both, as the case may be, of the sections numbers eight and twenty-six as above, in such fractional townships, and the allotment thereof shall be effected by the Minister and the said company, or by some person by both of them duly authorized. 10

83. If, when the survey of a township is effected, the sections so allotted, or any of them, or any portion of them, are found to have been bona fide settled on under the authority of any order in council, or of this Act, the company may, if it foregoes its right to the sections settled upon as aforesaid, or any one or more of such sections, select a quantity of land equal to that so settled on, and in lieu thereof from any lands then unoccupied. 20

84. The lands to which the company is entitled as in this Act hereinbefore provided, which are situate in any township withdrawn from settlement and sale and held as timber lands under the provisions herein contained, shall not form part of the timber limit or limits included in such township, but shall be the property of the company.

85. One-twentieth of the revenue derived from timber limits granted in unsurveyed territory within the fertile belt, as herein provided, shall, so long as the townships comprised in the same remain unsurveyed, be annually paid and accounted for to the said company; but such one-twentieth shall cease or be diminished in proportion as the townships comprised in such limits, or any of them, are surveyed; and in such case the said company shall receive their one-twentieth interest in the lands in such townships in sections eight and twenty-six, as herein provided. 30

86. If the said sections, or either of them, when surveyed as aforesaid, prove to have been denuded of timber by the lessee, to the extent of one-half or more, the company shall not be bound to accept such section or sections so denuded, and shall be entitled to select a section or sections of an equal extent, in lieu thereof, from any unoccupied lands in the township. 40



87. As townships are surveyed, and the respective surveys thereof are confirmed, or as townships or parts of townships are set apart and reserved from sale as timber lands, the Governor of the company shall be duly notified thereof by the Minister, and thereupon this Act shall operate to pass the title in fee simple in the sections or three-quarter parts of sections to which the company is entitled, as aforesaid, and to vest the same in the company, without the issue of a patent for such lands; and as regards the lands set apart by allotment, and those selected to satisfy the one-twentieth, as hereinbefore provided, returns thereof shall be made in due course by the local agent or agents, to the Dominion Lands Office, and patents shall issue for the same accordingly.

Title to lands to pass to company without patent in certain cases. Appendix of Statutes. No. 39. Excerpts from an Act respecting Public Lands, 1906 —continued.

159. Lands containing coal or other minerals, including lands in the Rocky Mountains Park, shall not be subject to the provisions of this Act respecting sale or homestead entry, but the Governor in Council, may from time to time, make regulations for the working and development of mines on such lands, and for the sale, leasing, licensing or other disposal thereof.
- 20 160. No disposition of mines or mining interests in the Rocky Mountains Park shall be for a longer period than twenty years, renewable, in the discretion of the Governor in Council, from time to time, for further periods of twenty years each, and not exceeding in all sixty years.
161. No grant from the Crown of lands in freehold or for any less estate, shall be deemed to have conveyed or to convey the gold or silver mines therein, unless the same are expressly conveyed in such grant.
- 30 162. Every discoverer of minerals upon surveyed or unsurveyed lands, or his assigns and associates, who had applied for a grant of such lands before the passing of chapter twenty-six of the Acts passed in the forty-third year of the reign of Her late Majesty Queen Victoria, shall be held to have the same rights as if that Act had not been passed.

Regulations respecting mines, &c.

Rocky Mountains Park.

Grant of lands not to convey gold or silver.

Rights of discoverers of minerals.

## No. 40.

**Excerpts from an Act to Consolidate and Amend the Acts respecting the  
Public Lands of the Dominion (7-8 Edward VII, Chap. 20).***(Assented to 20th July, 1908.)*

His Majesty, by and with the advice and consent of the  
Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as The Dominion Lands Act.

2. . . . .

(e) "Dominion lands" or "lands" or "land"  
means lands of the Dominion of Canada to which this 10  
Act applies.

3. Except as provided by this or any other Act of the  
Parliament of Canada, this Act applies:—

(a) to the lands of the Dominion of Canada in the  
provinces of Manitoba, Saskatchewan and Alberta, and  
in the Northwest Territories of Canada;

(b) to the three and one-half million acres of land  
to be located by the Government of Canada in that  
portion of the Peace River district of British Columbia,  
lying east of the Rocky Mountains and adjoining the 20  
province of Alberta, granted to the Crown, as represented  
by the Government of Canada, by section 7, chapter 14  
of the British Columbia statutes of 1884.

.....

Sale or lease.

37. Lands containing salt, petroleum, natural gas, coal,  
gold, silver, copper, iron or other minerals may be sold or leased  
under regulations made by the Governor in Council; and these  
regulations may provide for the disposal of mining rights  
underneath lands acquired or held as agricultural, grazing or  
hay lands, or any other lands held as to the surface only, but  
provision shall be made for the protection and compensation 30  
of the holders of the surface rights, in so far as they may be  
affected under these regulations.

.....

Certain sec-  
tions to be  
Hudson's Bay  
Co.'s lands.

44. In that portion of the territory surrendered to the Crown  
by the Hudson's Bay Company, which in the deed of surrender  
is described as being bounded "on the south by the United  
States boundary, on the west by the Rocky Mountains, on  
the north by the Northern branch of the Saskatchewan River,  
on the east by Lake Winnipeg, the Lake of the Woods and the  
waters connecting them," every fifth township, namely, those

townships numbered five, ten, fifteen, twenty, twenty-five, thirty, thirty-five, forty, forty-five, fifty, and so on in regular succession between the said southern and northern boundaries of the said territory, the whole of sections numbered eight and twenty-six, and in each and every of the other townships in the said territory, the whole of section numbered eight, and the south half and north-west quarter of section numbered twenty-six, except in the cases hereinafter provided for, shall be known and designated as the Hudson's Bay Company's lands: Provided

10 that in the case of any township abutting on the northern bank of the Northern Branch of the Saskatchewan River, the company, as provided in such deed of surrender, may take its one-twentieth of any such township which shall not extend more than five miles inland from the river, but only in exchange for an equal quantity of lands to which the company is entitled and which abut on the southern bank of such river.

45. The company's one-twentieth of the lands in fractional townships shall be satisfied out of one or other or both, as the case may be, of the sections numbered eight and twenty-six as above, in such fractional townships, and the allotment thereof shall be effected by the Minister and the said company, or by

20 some person by both of them duly authorized.

46. If, when the survey of a township is effected, the sections so allotted, or any of them, or any portion or them, are found to have been bona fide settled on, the company may, if it foregoes its right to the sections settled upon as aforesaid, or to any one or more of such sections, select a quantity of land equal to that so settled on, and in lieu thereof, from any lands then unoccupied.

30 47. The lands to which the company is entitled, as in this Act hereinbefore provided, which are situate in any township withdrawn from settlement and sale and held as timber lands or as a forest reserve, shall not be included in any timber limit or berth, or in such forest reserve, but shall be the property of the company.

48. One-twentieth of the revenue derived from any timber berths in any unsurveyed portion of the territory described in section 44 of this Act shall be annually accounted for and paid to the company until the said territory is surveyed in whole or

40 in part into townships, when such accounting for and payment shall wholly cease or be diminished as the townships are surveyed and the company receives its one-twentieth interest in the lands in such townships out of sections eight and twenty-six as herein provided.

Appendix of  
Statutes.

No. 40.  
Excerpts  
from an Act  
to con-  
solidate and  
amend the  
Acts re-  
specting the  
Public  
Lands of the  
Dominion,  
20th July  
1908—con-  
tinued.



Appendix of As to lands  
Statutes. found de-  
— nuded of  
No. 40. timber.

Excerpts  
from an Act  
to con-  
solidate and  
amend the  
Acts re-  
specting the  
Public  
Lands of the  
Dominion,  
20th July  
1908—con-  
tinued.

Title to lands  
to pass to  
Hudson's Bay  
Co.

49. If the said sections, or either of them, when surveyed as aforesaid, prove to have been denuded of timber by a licensee, to the extent of one-half or more, the company shall not be bound to accept such section or sections so denuded, and shall be entitled to select a section or sections of an equal extent in lieu thereof, from any unoccupied lands in the township.

50. As townships are surveyed, and the respective surveys thereof are confirmed, or as townships or parts of townships are set apart and reserved from sale as timber lands, the Governor of the company shall be duly notified thereof by the Minister, and thereupon this Act shall operate to pass the title in fee simple in the sections or three-quarter parts of sections to which the company is entitled as aforesaid, and to vest them in the company, without the issue of letters patent for such lands; and as regards the lands set apart by allotment, and those selected to satisfy the one-twentieth, as hereinbefore provided, returns thereof shall be made in due course by the local agent or agents, to the Minister, and letters patent shall issue therefor accordingly. 10

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*On Appeal from the Supreme Court of Canada*

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BETWEEN

THE GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND TRADING IN HUDSON'S BAY - - *Appellants*

AND

THE ATTORNEYS-GENERAL FOR THE DOMINION OF CANADA AND THE PROVINCES OF MANITOBA, SASKATCHEWAN AND ALBERTA- *Respondents*

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RECORD OF PROCEEDINGS

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BISCHOFF, COXE, BISCHOFF & THOMPSON,  
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of Manitoba and Saskatchewan*



In the Privy Council.

## ON APPEAL

FROM THE SUPREME COURT OF CANADA.

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BETWEEN

THE GOVERNOR AND COMPANY OF ADVENTURERS OF  
ENGLAND TRADING INTO HUDSON'S BAY ... .. APPELLANTS

—AND—

THE ATTORNEYS-GENERAL FOR THE DOMINION OF  
CANADA AND THE PROVINCES OF MANITOBA, SASKAT-  
CHEWAN AND ALBERTA ... .. RESPONDENTS.

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## APPELLANTS' ADDITIONAL APPENDIX OF STATUTES

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BISCHOFF, COXE, BISCHOFF & THOMPSON,  
4 Great Winchester Street, E.C.2,  
*Solicitors for the Appellants.*



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BETWEEN—THE GOVERNOR AND COMPANY OF  
ADVENTURERS OF ENGLAND TRADING INTO  
HUDSON'S BAY ... .. APPELLANTS  
AND  
THE ATTORNEYS - GENERAL FOR THE  
DOMINION OF CANADA AND THE PROVINCES  
OF MANITOBA, SASKATCHEWAN AND ALBERTA RESPONDENTS.

## ADDITIONAL APPENDIX OF STATUTES.

### No. 1.

THE BRITISH NORTH AMERICA ACT, 1871.

*An Act respecting the Establishment of Provinces in the Dominion of Canada*  
(34-35 Vict., Ch. 28).

[29th June, 1871.]

ADDITIONAL  
APPENDIX OF  
STATUTES

No. 1

The British  
North America  
Act, 1871 (34-35  
Vict., Ch. 28)

Whereas doubts have been entertained respecting the powers of the Parliament of Canada to establish Provinces in Territories admitted, or which may hereafter be admitted, into the Dominion of Canada, and to provide for the representation of such Provinces in the said  
10 Parliament, and it is expedient to remove such doubts, and to vest such powers in the said Parliament :

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1.—This Act may be cited for all purposes as “ The British North  
“ America Act, 1871.” Short title

2.—The Parliament of Canada may from time to time establish  
new Provinces in any territories forming for the time being part of the

Parliament  
of Canada may  
establish new  
Provinces and  
provide for the  
constitution,  
etc., thereof

ADDITIONAL  
APPENDIX OF  
STATUTES

No. 1

The British  
North America  
Act, 1871 (34-35  
Vict., Ch. 28)

Alteration  
of limits  
of Provinces

Parliament  
of Canada  
may legislate  
for any  
territory not  
included in  
a Province

Confirmation  
of Acts of  
Parliament  
of Canada,  
32 & 33 Vict.  
(Canadian),  
Ch. 3,  
33 Vict.  
(Canadian),  
Ch. 3

Limitation of  
powers of  
Parliament of  
Canada to  
legislate for  
an established  
Province

Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order, and good government of such Province, and for its representation in the said Parliament.

3.—The Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby. 10

4.—The Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any territory not for the time being included in any Province.

5.—The following Acts passed by the said Parliament of Canada, and intituled respectively—“An Act for the temporary government of “Rupert’s Land and the North Western Territory when united with “Canada”; and “An Act to amend and continue the Act thirty-two “and thirty-three Victoria, chapter three, and to establish and provide “for the government of the Province of Manitoba”, shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen’s name, of the Governor-General of the said Dominion of Canada. 20

6.—Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last-mentioned Act of the said Parliament in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly, and to make laws respecting elections in the said Province. 30



## No. 2.

## No. 2

EXCERPTS FROM THE DOMINION LANDS ACT, 1883.  
(46 VICT., CH. 17.)Excerpts from  
Dominion Lands  
Act, 1883 (46 Vict.,  
Ch. 17)*An Act further to Amend and to Consolidate, as so Amended, the several Acts respecting  
the Public Lands of the Dominion therein mentioned.*

[Assented to 25th May, 1883.]

Whereas it is expedient, with a view to the proper and efficient  
administration and management of certain of the public lands of the  
Dominion, that the same should be regulated by statute, and divers  
10 Acts have been passed for that purpose which it is expedient further to  
amend and to consolidate as so amended: Therefore Her Majesty, by  
and with the advice and consent of the Senate and House of Commons  
of Canada, enacts as follows:—

## PRELIMINARY—INTERPRETATION.

1.—This Act applies exclusively to the public lands included in  
Manitoba and the several Territories of the Dominion, which lands  
shall be styled and known as Dominion Lands; and this Act shall be  
known and may be cited as the “Dominion Lands Act, 1883”; and  
the following terms and expressions therein shall be held to have the  
20 meaning hereinafter assigned them, unless such meaning be repugnant  
to the subject or inconsistent with the context; that is to say:—

1. The term “Minister of the Interior” means the Minister of  
the Interior of Canada.

Preamble  
Extent of  
Act  
Short title  
Interpretation  
of terms  
Minister of  
Interior

2. The term “Surveyor-General” means the officer of the  
Department of the Interior bearing that designation, or the chief  
clerk performing his duties for the time being;

Surveyor  
General

3. The term “Agent or Officer” means any person, or officer,  
employed in connection with the administration and management,  
sale or settlement of Dominion lands; and the term “Local Agent”  
30 means the Agent for Dominion lands employed as aforesaid, with  
respect to the lands in question; and the term “Land Office”  
means the office of any such Agent;

Agent, Officer

Local Agent

Land office

4. The term “Dominion Land Surveyor” means a Surveyor  
duly authorised under the provisions of this Act, to survey Dominion  
lands;

Dominion  
Land Surveyor

5. The term “Crown Timber Agent” means the local officer  
appointed to collect dues and to perform such other duties as may  
be assigned to such officer, in respect to the timber on Dominion  
lands;

Crown  
Timber  
Agent

ADDITIONAL  
APPENDIX OF  
STATUTES

No. 2

Excerpts from  
Dominion Lands  
Act, 1883 (46 Vict.,  
Ch. 17)

Clause]

Sub-clause

Canada  
Gazette

Pre-emption  
entry and  
right

6. The term "Clause" means a section of this Act, or of any Act herein cited, distinguished by a separate number; and the term Sub-clause means a subdivision of any clause distinguished by a separate number or letter, in smaller type;

7. The term "Canada Gazette" means the official Gazette of the Government, published at Ottawa.

8. The term "Pre-emption entry" means the entering on the books of a Local Agent of a preferential claim to acquire by purchase, in connection with a homestead entry, and on becoming entitled to a patent for the homestead, a quarter section or part of a quarter section of land adjoining such homestead; and the term "Pre-emption right" means the right of obtaining a patent for such quarter section or part of a quarter section, on the said condition and on payment of the price fixed by the Governor in Council at the time of entry, in the class of lands in which such pre-emption is comprised in respect of land subject to pre-emption entry.

DEPARTMENT OF THE INTERIOR.

Administra-  
tion and  
management

2.—The Department of the Minister of the Interior shall be charged with the administration and management of the Dominion lands:

How effected

2. Such administration and management shall be effected through a Branch of the said Department, to be known and designated as "The Dominion Lands Office";

Governor in  
Council may  
appoint certain  
officers and  
boards

3. The Governor in Council may appoint an officer to be styled "The Commissioner of Dominion Lands," and an officer to be styled "The Inspector of Dominion Lands Agencies," and such officers shall respectively have the powers, not inconsistent with the provisions of this Act, and perform the duties that may be, from time to time, conferred upon and assigned to them by order of the Governor General in Council; the Governor in Council may also establish a "Dominion Lands Board" to investigate and settle all disputed questions arising out of the duties imposed upon the Commissioner of Dominion Lands and the Inspector of Dominion Lands Agencies, and all matters connected with the administration of the Dominion Lands system in Manitoba and the North-West Territories; and such Dominion Lands Board shall be composed of such persons, and shall have such powers and authority, not inconsistent with this Act, and shall perform such duties as shall, from time to time, be prescribed by Order of the Governor in Council;

Their powers  
and duties

Certified  
copies of  
certain  
documents to  
be evidence

4. Copies of any records, documents, plans, books or papers, belonging to or deposited in the Dominion Lands office, attested under the signature of the Minister of the Interior or of the Surveyor-General, or any chief clerk or officer authorized thereto, and of plans or documents in any Dominion lands or Surveys office in Manitoba or the North-West Territories, attested under the signature of the Agent or Inspector of Surveys, or other officer in charge of such

office, shall be competent evidence in all cases in which the original records, documents, books, plans or papers would be evidence; and lithographed or other copies of maps or plans purporting to be issued or published by the "Dominion Lands Office" of the Department of the Interior, and to have a lithographed or copied signature of the Minister of the Interior or of the Surveyor-General thereto attached, shall be received in all courts and proceedings as prima facie evidence of the originals, and of the contents thereof:

As to  
lithographed  
copies, etc.

ADDITIONAL  
APPENDIX OF  
STATUTES

No. 2

Excerpts from  
Dominion Lands  
Act, 1883 (46 Vict.,  
Ch. 17)

10

5. No person employed in or under the Department of the Interior, including the Geological Survey Branch thereof, shall purchase any Dominion lands except under authority of an Order in Council, or shall locate military or bounty land warrants, or land scrip, or act as agent of any other person in such behalf; nor shall any person so employed disclose to any person except his superior officer any discovery made by him or by any other officer of the Department of the Interior, nor any other information in his possession in relation to Dominion Lands, until such discovery or information has been reported to the Minister of the Interior, and his permission for such disclosure has been obtained.

Employees of  
department  
not to purchase  
Dominion  
lands;

Or give  
information  
without  
permission  
of Minister

20

#### INDIAN TITLE.

3.—None of the provisions of this Act shall be held to apply to territory the Indian title to which shall not, at the time, have been extinguished.

As to lands  
still under  
Indian title

#### DOMINION LANDS—TOWNSHIPS.

4.—The Dominion lands shall be laid off in quadrilateral townships, each containing thirty-six sections of as nearly one mile square as the convergence of meridians permits, with such road allowances between sections, and of such width, as the Governor in Council may fix:

System of  
survey  
Townships

30

2. The sections shall be bounded and numbered as shown by the following diagram:—

Sections

N.

	31	32	33	34	35	36	
	30	29	28	27	26	25	
	19	20	21	22	23	24	
W.	18	17	16	15	14	13	E.
	7	8	9	10	11	12	
	6	5	4	3	2	1	

S.

40



ADDITIONAL  
APPENDIX OF  
STATUTES

No. 2

Excerpts from  
Dominion Lands  
Act, 1883 (46 Vict.,  
Ch. 17)

Lines  
bounding  
townships

How townships  
shall be  
numbered  
from  
principal  
meridian

From other  
meridians

Width on  
base lines

Base lines  
of townships

Correction  
lines

Division of a  
section

Allowances  
for deficiency  
or surplus

Proviso

5.—The lines bounding townships on the east and west sides shall be meridians ; and those on the north and south sides shall be chords to parallels of latitude.

6.—The townships shall be numbered, in regular order, northerly from the international boundary, or forty-ninth parallel of latitude, and shall lie in ranges numbered, in Manitoba, east and west from a certain meridian line run in the year 1869, styled the "Principal Meridian," drawn northerly from the said forty-ninth parallel at a point ten miles, or thereabouts, westerly from Pembina ; and in ranges numbered from such other initial meridians throughout the North-West Territories as the Minister of the Interior may, in his direction of the land surveys, order to be established—such meridians to be styled the Second, the Third, the Fourth Meridian, and so on, according to their order in number westward from the Principal Meridian. 10

7.—Townships shall be given their prescribed width on the base lines hereinafter mentioned ; and the meridians between townships shall be drawn across such bases, northward and southward to the depth of two townships therefrom, that is to say, to the correction lines hereinafter mentioned.

8.—The said forty-ninth parallel, or international boundary, shall be the first base line, or that for townships numbered one. The second base line shall be between townships four and five, the third between townships eight and nine, the fourth between townships twelve and thirteen, the fifth between townships sixteen and seventeen, and so on northerly in regular succession. 20

9.—The correction lines, or those upon which the "jog" resulting from the convergence of meridians shall be allowed, shall be as follows, that is to say :—on the line between townships two and three, on that between six and seven, on that between ten and eleven, and so on. In other words, they will be those lines running east and west between townships and midway between the bases. 30

10.—Each section shall be divided into quarter sections of one hundred and sixty acres, more or less, subject to the provisions hereinafter made.

11.—In the survey of a township, the deficiency or surplus, resulting from convergence of meridians shall be allowed in the range of quarter sections adjoining the west boundary of the township, and the north and south error in closing on the correction lines from the north or south shall be allowed in the ranges of quarter sections adjoining, and north or south respectively of the said correction lines : Provided, that such 40

deficiency or surplus, and such north and south error, or either of them, may, by the Governor in Council, be ordered to be equally distributed among all the quarter sections involved.

12.—The dimensions and area of irregular quarter sections shall, in all cases, be returned by the surveyor at their actual measurements and contents.

Irregular  
quarter  
sections

Excerpts from  
Dominion Lands  
Act, 1883 (46 Vict.,  
Ch. 17)

13.—Preliminary to the subdivision into townships and sections of any given portion of country proposed to be laid out for settlement, the same shall be laid out into blocks of four townships each, by projecting the base and correction lines, and east and west meridian boundaries of each block :

Blocks of 4  
townships to  
be first  
laid out

2. On these lines, at the time of the survey, all township, section and quarter-section corners shall be marked, which corners shall govern, respectively, in the subsequent subdivision of the block.

Corners to  
be marked

14.—Except as hereinafter provided, only a single row of posts or monuments, to indicate the corners of townships or sections, shall be placed on any survey line thereof. These posts or monuments shall, on north and south lines, be placed in the west limit of the road allowances, and on the east and west lines, in the south limit of road allowances, and in all cases shall fix and govern the position of the boundary corner between the adjoining townships, sections, or quarter sections, on the opposite side of the road allowance :

Posts and  
monuments  
at corners

2. Provided, that in the case of township, section and quarter-section corners on correction lines, posts or monuments shall, in all cases, be planted and marked independently for the townships on either side ; those for the townships north of the line, in the north limit of the road allowance, and those for the townships south of the line, in the south limit.

Proviso : as  
to corners  
on correction  
lines

15.—The township subdivision surveys of the Dominion lands, according to the system above described, shall be performed under contract at a certain rate per township, per mile, or per acre, fixed from time to time by the Governor in Council, or by competitive tender, as may be fixed from time to time by the Governor in Council : Provided that, in special cases, where circumstances may render it advisable to effect otherwise the survey of a township, or townships, the Governor in Council may order the same to be done.

Surveys to  
be given out  
by contract  
or tender

Proviso

16.—To facilitate the descriptions for Letters Patent of less than a quarter section, every section shall be supposed to be divided into quarter quarter sections, or forty acres, and such quarter quarter sections shall be numbered as shown in the following diagram, which is intended

Legal  
subdivisions  
of townships

to show such subdivisions of a section, which shall be styled legal subdivisions :

	N.				
	13	14	15	16	
	12	11	10	9	
W.	5	6	7	8	E.
	4	3	2	1	
	S.				

Areas to be  
more or less

2. The area of any legal subdivision as above set forth shall, in letters patent, be held to be more or less, and shall in each case be represented by the exact quantity as given to such subdivision in the original survey. 10

Proviso : as  
to laying out  
and describing  
lands in  
certain  
sections

17.—Provided that nothing in this Act shall be construed to prevent the lands upon the Red and Assiniboine Rivers, surrendered by the Indians to the late Earl of Selkirk, from being laid out in such manner as may be necessary in order to carry out section thirty-two of the Act thirty-third Victoria, chapter three, or to prevent fractional sections or lands bordering on any river, or lake, or other water course, or on a public road, from being laid out and divided into lots of any certain frontage or depth, in such manner as may appear desirable, or to prevent the subdivision of sections or other legal subdivisions into wood lots as hereinafter provided, or the describing of the said lands upon the Red and Assiniboine Rivers, or such subdivisions of fractional sections or lands bordering as above, or other lots, or wood lots, for patent, by numbers according to a plan of record, or by metes and bounds, or by both, as may seem expedient. 20

#### DISPOSAL OF DOMINION LANDS.

##### Lands Reserved by the Hudson's Bay Company.

Recital

18.—Whereas by article five of the terms and conditions in the deed of surrender from the Hudson's Bay Company to the Crown, the said Company is entitled to one-twentieth of the lands surveyed into townships in a certain portion of the territory surrendered, described and designated as the "Fertile Belt"; 30

Recital

2. And whereas by the terms of the said deed, the right to claim the said one-twentieth is extended over the period of fifty years, and it is provided that the lands comprising the same shall be determined by lot; and whereas the said Company and the Government of the Dominion have mutually agreed that with a view to an equitable distribution throughout the territory described,



of the said one-twentieth of the lands, and in order further to simplify the setting apart thereof, certain sections or parts of sections, alike in numbers and position in each township throughout the said territory, shall, as the townships are surveyed, be set apart and designated to meet and cover such one-twentieth :

ADDITIONAL  
APPENDIX OF  
STATUTES

No. 2

Excerpts from  
Dominion Lands  
Act, 1883 (46 Vict.,  
Ch. 17)

3. And whereas it is found by computation that the said one-twentieth will be exactly met by allotting in every fifth township two whole sections of six hundred and forty acres each, and, in all other townships, one section and three-quarters of a section :  
therefore--

Recital

4. In every fifth township in the said territory, that is to say : in those townships numbered 5, 10, 15, 20, 25, 30, 35, 40, 45, 50, and so on in regular succession northerly from the international boundary, the whole of sections numbers 8 and 26, and in each and every of the other townships, the whole of section number 8, and the south half and north-west quarter of section number 26 (except in the cases hereinafter provided for) shall be known and designated as the lands of the said Company :

Certain  
sections and  
parts of  
sections in  
certain  
townships  
to be  
Hudson's Bay  
Company's  
lands

5. Provided, that the Company's one-twentieth of the lands in fractional townships shall be satisfied out of one, or other, or both, as the case may be, of the sections numbers eight and twenty-six as above, in such fractional townships,—the allotment thereof to be effected by the Minister of the Interior and the said Company, or some person duly authorized by them respectively :

Company's  
lands in  
fractional  
townships

6. Provided further, that on the survey of a township being effected, should the sections so allotted, or any of them, or any portion of them, be found to have been bona fide settled on under the authority of any Order in Council, or of this Act, then if the Company forego their right to the sections settled upon as aforesaid, or any one or more of such sections, they shall have the right to select a quantity of land equal to that so settled on, and in lieu thereof, from any lands then unoccupied :

Company  
may select  
lands in lieu  
of any found  
settled upon  
by authority

7. Provided also, as regards the sections and parts of sections as above mentioned, that where the same may be situate in any township withdrawn from settlement and sale, and held as timber lands under the provisions hereinafter contained, the same shall form no part of the timber limit or limits included in such township, but shall be held to be the property of the Company :

Company's  
lands not to  
be included  
in timber  
limits

8. Provided further, that one-twentieth of the revenue derived from timber limits which may be granted in unsurveyed territory within the fertile belt, as hereinafter provided, shall be annually, so long as the townships comprised in the same remain unsurveyed, paid and accounted for to the Company,—such one-twentieth to cease or to be diminished in proportion as the townships comprised

Company to  
have one-  
twentieth of  
revenue from  
timber limits  
in unsurveyed  
lands in  
fertile belt

ADDITIONAL  
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STATUTES

No. 2

Excerpts from  
Dominion Lands  
Act, 1883 (46 Vict.,  
Ch. 17)

Proviso: as  
to lands  
found  
denuded of  
timber

Title to  
lands to pass  
to Company  
without  
patent in  
certain cases,  
but by  
patent in  
others

Mineral and  
coal lands to  
be disposed  
of under  
Order in  
Council

Gold or silver  
mines not to  
pass by  
grant of land  
containing  
them

Rights of  
discoverers  
of minerals

Acts 42  
Vict., Ch. 31,  
43 Vict.,  
Ch. 26, and  
44 Vict., Ch.  
16, repealed

in such limits, or any of them, may be surveyed, in which event the Company shall receive their one-twentieth interest in the lands in such townships in sections eight and twenty-six as hereinbefore enacted: Provided, nevertheless, that on such sections being surveyed as aforesaid, should the same, or either of them, prove to have been denuded of timber by the lessee, to the extent of one-half or more, then in such case the Company shall not be bound to accept such section or sections so denuded, and shall have the right to select a section or sections to an equal extent in lieu thereof from any unoccupied lands in such township. 10

9. As townships are surveyed and the respective surveys thereof confirmed, or as townships or parts of townships are set apart and reserved from sale as timber lands, the Governor of the said Company shall be duly notified thereof by the Minister of the Interior, and thereupon this Act shall operate to pass the title in fee simple in the sections or three-quarter parts of sections to which the Company will be entitled under this clause, as aforesaid, and to vest the same in the said Company, without requiring a patent to issue for such lands; and as regards the lands set apart by allotment and those selected to satisfy the one-twentieth in townships other than the above, as provided in sub-clauses five and six, returns thereof shall be made in due course by the Local Agent, or Agents, to the Dominion Lands Office, and patents shall issue for the same accordingly. 20

\* \* \* \* \*

42.—Lands containing coal or other minerals, whether in surveyed or unsurveyed territory, shall not be subject to the provisions of this Act respecting sale or homestead entry, but shall be disposed of in such manner and on such terms and conditions as may, from time to time, be fixed by the Governor in Council by regulations to be made in that behalf.

43.—It is hereby declared that no grant from the Crown of lands in freehold or for any less estate, has operated or will operate as a conveyance of the gold or silver mines therein, unless the same are expressly conveyed in such grant. 30

44.—Any discoverer of minerals upon surveyed or unsurveyed lands, or his assigns and associates, who had applied for a grant of such lands before the passing of the Act forty-third Victoria, chapter twenty-six, shall be held to have the same rights as if that Act had not been passed.

\* \* \* \* \*

126.—Subject to the provisions hereinafter made, the Act passed in the forty-second year of Her Majesty's reign and intituled "An Act to amend and consolidate the several Acts respecting the Public Lands of the Dominion," and the Act passed in the forty-third year of Her Majesty's reign, and intituled "An Act to amend the Dominion Lands Act, 1879," and the Act passed in the forty-fourth year of Her Majesty's 40

reign, and intituled "An Act to amend the Dominion Lands Acts," are hereby repealed, and this Act is substituted for them,—the Acts repealed by the Act first mentioned, and for which it was substituted, remaining so repealed : Provided always, that all enactments repealed by any of the said Acts shall remain repealed, and that all things lawfully done and all rights acquired or liabilities incurred under them or any of them shall remain valid and may be enforced, and all proceedings and things lawfully commenced under them or any of them may be continued and completed, under this Act, which shall not be construed as a new law, 10 but as a consolidation and continuation of the Acts hereby repealed, subject to the amendments hereby made and incorporated with them ; and any thing heretofore done under any provision in any of the said repealed Acts which is repeated without alteration in this Act, may be alleged or referred to as having been done under the Act in which such provision was made, or under this Act.

Proviso : as  
to effect of  
such repeal

ADDITIONAL  
APPENDIX OF  
STATUTES

—  
No. 2  
—

Excerpts from  
Dominion Lands  
Act, 1883 (46 Vict.,  
Ch. 17)

How this Act  
shall be  
construed



ADDITIONAL  
APPENDIX OF  
STATUTES

—  
No. 3  
—

An Act respecting  
the boundaries of  
the Province of  
Manitoba  
(40 Vict., Ch. 6)

No. 3.

*An Act respecting the Boundaries of the Province of Manitoba (40 Vict., Ch. 6).*

[Assented to 28th April, 1877.]

Preamble.  
33 Vict.,  
Ch. 3, cited

Boundaries  
of Manitoba  
by that Act

Imperial  
Act 34, 35  
Vict., Ch. 28

Whereas by section one of the Act thirty-third Victoria, chapter three, intituled "An Act to amend and continue the Act 32 and 33 Victoria, chapter 3, and to establish and provide for the Government of the Province of Manitoba," the boundaries of the said Province are defined as follows, that is to say:—"Commencing at the point where the meridian of ninety-six degrees west longitude from Greenwich intersects the parallel of forty-nine degrees north latitude; thence due west along the said parallel of forty-nine degrees north latitude (which forms a portion of the boundary line between the United States of America and the said North-Western Territory) to the meridian of ninety-nine degrees of west longitude; thence due north along the said meridian of ninety-nine degrees west longitude, to the intersection of the same with the parallel of fifty degrees and thirty minutes north latitude; thence due east along the said parallel of fifty degrees and thirty minutes north latitude to its intersection with the before-mentioned meridian of ninety-six degrees of west longitude; thence due south along the said meridian of ninety-six degrees west longitude to the place of beginning:" And whereas the boundaries of the Province, as above described, upon the east and west converge as they extend northward from the forty-ninth parallel and do not correspond with the system of rectangular survey which has been adopted in the said Province and the North-West Territories; And whereas it is expedient in order to facilitate the correct registration of title to real estate in the said Province, as also in the adjoining District of Keewatin and the North-West Territories respectively, that the limits of the Province should be altered as hereinafter described; And whereas, by the Act of the Imperial Parliament thirty-fourth and thirty-fifth Victoria, chapter twenty-eight, intituled "An Act respecting the establishment of Provinces in the Dominion of Canada," the Parliament of Canada is empowered, with the consent of the Legislature of any Province, to alter the limits thereof; And whereas the Legislature of Manitoba has consented to the alteration of the boundaries of the said Province as hereinafter made upon condition that the Government of Canada will complete the survey of the boundaries of the Province upon the east and upon the north; and whereas the Parliament of Canada assents to this condition: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1.—All that portion of section one of the above recited Act, thirty-third Victoria, chapter three, setting forth, as therein described, the boundaries of the Province of Manitoba, is hereby repealed, and the following is substituted in lieu thereof, and is intended to describe the true boundaries of the Province, that is to say:—Commencing at the intersection of the International Boundary or forty-ninth parallel of north latitude, by the westerly boundary of township number one in the twelfth range west of the principal meridian in Manitoba; thence due north, following the westerly boundary, respectively, of townships one and two, to the intersection thereof by the southerly limit of the road allowance on the first correction line; thence due west along the latter to the intersection thereof by the westerly limit of township three in the aforesaid twelfth range west; thence due north following the westerly limit respectively, of townships three, four, five and six in the said twelfth range to the southerly limit of the road allowance on the second correction line; thence westerly upon the latter to the intersection thereof by the westerly limit of township seven in the aforesaid twelfth range; thence due north upon the westerly limit respectively of townships seven, eight, nine and ten, to the southerly limit of the road allowance on the third correction line; thence due west along the latter to the intersection thereof by the westerly limit of township eleven in the said twelfth range west of the principal meridian; thence due north along the westerly limit respectively, of townships eleven, twelve, thirteen and fourteen, to the southerly limit of the road allowance on the fourth correction line; thence westerly along the latter to the intersection thereof by the westerly limit of township fifteen in the said twelfth range west of the principal meridian; thence due north along the westerly limit respectively of townships fifteen, sixteen and seventeen, in the said twelfth range west to the southerly limit of the road allowance, the northerly boundary of the said township number seventeen; thence due east following the said southerly limit of the road allowance between townships seventeen and eighteen in the system of Dominion land surveys (the said line crossing Lakes Manitoba and Winnipeg) to the easterly boundary of township seventeen in the tenth range east of the principal meridian; thence due south along the easterly boundary, respectively, of townships seventeen, sixteen and fifteen to the southerly limit of the road allowance on the fourth correction line; thence due west along the latter to its intersection by the easterly limit of township fourteen in the aforesaid tenth range east; thence due south along the easterly limit, respectively, of townships fourteen, thirteen, twelve, and eleven, to its intersection with the southerly limit of the road allowance on the third correction line; thence due west along the latter to its intersection with the easterly limit of township ten in the said tenth range east; thence due south along the easterly limit, respectively, of townships ten, nine, eight and seven, to the intersection thereof by the southerly limit of the road allowance on the second correction line, thence due west along the latter to its intersection with the easterly limit of township six in the said tenth range east of the principal meridian; thence due south along the easterly limit respectively, of townships six, five, four and three, to the intersection

Former  
boundaries  
repealed  
and new  
boundaries  
described

ADDITIONAL  
APPENDIX OF  
STATUTES

—  
No. 3  
—

An Act respecting  
the boundaries of  
the Province of  
Manitoba,  
(40 Vict., Ch. 6)

ADDITIONAL  
APPENDIX OF  
STATUTES

—  
No. 3  
—

An Act respecting  
the boundaries of  
the Province of  
Manitoba  
(40 Vict., Ch. 6)

Keewatin  
and N.W.  
Territories  
how bounded

thereof, by the southerly limit of the road allowance on the first correction line ; thence due west along the latter to its intersection with the easterly limit of township two in the said tenth range east ; thence due south along the easterly limit, respectively, of townships two and one, to the intersection thereof, by the forty-ninth parallel of north latitude of the International Boundary line aforesaid ; and thence due west following upon the said forty-ninth parallel of north latitude, or the International Boundary line, to the place of beginning.

2.—The District of Keewatin shall be bounded on the west, and the North-West Territories shall be bounded on the east, by the Province 10 of Manitoba as hereinbefore defined, the said District and Territories remaining bounded on the south by the Province of Manitoba as heretofore.



## No. 4.

*An Act to provide for the Extension of the Boundaries of the Province of Manitoba.*  
(44 Vict., Ch. 14).

An Act to provide  
for the extension of  
the boundaries of  
the Province of  
Manitoba  
(44 Vict., Ch. 14)

[Assented to 21st March, 1881.]

Whereas, by an Act of the Legislature of the Province of  
Manitoba, passed during the session thereof held in the present year  
of Her Majesty's reign, and intituled "An Act to provide for the extension  
"of the boundaries of the Province of Manitoba," the Legislature of that  
Province hath consented to the increase of the same by the alteration  
10 of its limits, as hereinafter enacted, upon the terms and conditions  
hereinafter expressed: Therefore Her Majesty, by and with the advice  
and consent of the Senate and House of Commons of Canada, enacts as  
follows:—

Preamble

Act of  
Manitoba

1.—The Province of Manitoba shall be increased as hereinafter  
defined, that is to say, so that the boundaries thereof shall be as follows:—  
"Commencing at the intersection of the International Boundary dividing  
"Canada from the United States of America by the centre of the Road  
"Allowance between the twenty-ninth and thirtieth ranges of townships  
"lying west of the first principal meridian in the system of Dominion  
20 "Land Surveys; thence northerly, following upon the said centre of the  
"said road allowance as the same is or may hereafter be located, defining  
"the said range line on the ground across Townships one to forty-four,  
"both inclusive, to the intersection of the said centre of the said road  
"allowance by the centre of the road allowance on the twelfth base line  
"in the said system of Dominion Land Surveys; thence easterly along  
"the said centre of the road allowance on the twelfth base line, following  
"the same to its intersection by the easterly limit of the District of  
"Keewatin, as defined by the Act thirty-ninth Victoria, Chapter twenty-  
30 "one, that is to say, to a point where the said centre of the road allowance  
"on the twelfth base line would be intersected by a line drawn due north  
"from where the westerly boundary of the Province of Ontario intersects  
"the aforesaid International Boundary Line dividing Canada from the  
"United States of America; thence due south, following upon the said  
"line to the International Boundary aforesaid; and thence westerly,  
"following upon the said International Boundary Line dividing Canada  
"from the United States of America, to the place of beginning," and all  
the land embraced by the said description not now within the Province  
of Manitoba shall, from and after the passing of this Act, be added thereto  
and the whole shall, from and after the said date, form and be the  
40 Province of Manitoba.

Boundaries  
of Manitoba  
defined  
Extent  
increased

ADDITIONAL  
APPENDIX OF  
STATUTES

—  
No. 4  
—

An Act to provide  
for the extension of  
the boundaries of  
the Province of  
Manitoba  
(44 Vict., Ch. 14)

Terms and  
conditions  
of increase

Dominion  
Acts extended  
to Manitoba,  
to apply to  
new limits,  
subject to  
s. 3

And to all  
provisions  
respecting  
C.P. Railway

Laws, courts,  
commissions,  
officers, etc.,  
in force in  
territory  
added by  
this Act to  
remain in  
force there,  
until  
otherwise  
provided

When this  
Act shall be  
in force

2.—The terms and conditions upon which such increase is made are as follows :—

- (A) All the enactments and provisions of all the Acts of the Parliament of Canada which have, since the creation of the Province of Manitoba, been extended into and made to apply to the said Province, shall extend and apply to the territory by this Act added thereto, as fully and effectually as if the same had originally formed part of the Province and the boundaries thereof had, in the first instance, been fixed and defined as is done by this Act,—subject, however, to the provisions of 10 section three of this Act.
- (B) The said increased limit and the territory thereby added to the Province of Manitoba shall be subject to all such provisions as may have been or shall hereafter be enacted, respecting the Canadian Pacific Railway and the lands to be granted in aid thereof.

3.—All laws and ordinances in force in the territory hereby added to the Province of Manitoba at the time of the coming into force of this Act, and all courts of civil and criminal jurisdiction, and all legal commissions, powers and authorities, and all officers, judicial, administrative and 20 ministerial, existing therein at the time of the coming into force of this Act, shall continue therein as if such territory had not been added to the said Province ; subject, nevertheless, with respect to matters within the Legislative authority of the Legislature of the Province of Manitoba, to be repealed, abolished or altered by the said Legislature.

4.—This Act shall come into force only upon, from and after a day to be appointed in that behalf by proclamation of the Governor published in the "Canada Gazette."

## No. 5.

## No. 5

*An Act to provide for the Extension of the Boundaries of the Province of Manitoba*  
(2 George V, Ch. 32).

[Assented to 1st April, 1912.]

An Act to provide  
for the extension  
of the boundaries  
of the Province of  
Manitoba  
(2 George V, Ch. 32)

Whereas, on the thirteenth day of July, one thousand nine hundred and eight, the House of Commons resolved that the limits of the Province of Manitoba should be increased by the extension of the boundaries of the province northward to the sixtieth parallel of latitude and north-eastward to the shores of Hudson Bay, as in the said resolution is more particularly set out, upon such terms and conditions as may be agreed to by the Legislature of Manitoba and by the Parliament of Canada ;

Preamble

And whereas it is desirable that the financial terms applicable to the said province, as altered by the increase of territory aforesaid, should be on a basis of substantial equality with the financial terms enjoyed by each of the provinces of Saskatchewan and Alberta under The Saskatchewan Act and The Alberta Act, respectively, inasmuch as the area of these respective provinces is approximately equal to that of the province of Manitoba as by this Act increased, and inasmuch as each of the said three provinces at the time of its establishment as a province was without public debt, and inasmuch as the Crown lands, mines and minerals and royalties incident thereto in the province of Manitoba are, as is the case in the other two said provinces, vested in the Crown and administered by the Government of Canada for the purposes of Canada : Therefore, subject to the consent of the Legislature of Manitoba, His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1905, Ch. 42  
1905, Ch. 3

## SHORT TITLE.

1.—This Act may be cited as The Manitoba Boundaries Extension Act, 1912.

Short title

## INTERPRETATION.

2.—In this Act, unless the context otherwise requires :—

Interpretation

(A) “ the province ” means the province of Manitoba ;

“ Province ”

(B) “ the Government ” means His Majesty the King acting in respect of the Dominion of Canada by and through the Governor General in Council.

“ Government ”

## BOUNDARIES.

3.—The limits of the province are hereby increased so that the boundaries of the province shall be as follows : Commencing where the

Boundaries  
extended



ADDITIONAL  
APPENDIX OF  
STATUTES

—  
No. 5  
—

An Act to provide  
for the extension  
of the boundaries  
of the Province of  
Manitoba  
(2 George V, Ch. 32)

U.K. 1889,  
Ch. 28

sixtieth parallel of north latitude intersects the western shore of Hudson Bay ; thence westerly along the said parallel of latitude to the north-east corner of the province of Saskatchewan ; thence southerly along the easterly boundary of the province of Saskatchewan to the international boundary dividing Canada from the United States ; thence easterly along the said International Boundary to the point where the said International Boundary turns due north ; thence north along the said International Boundary to the most northerly point thereof at or near the north-west angle of the Lake of the Woods ; thence continuing due north along the westerly boundary of the province of Ontario, by virtue of "The Canada (Ontario Boundary) Act, 1889," chapter 28 of the statutes of 1889 of the United Kingdom (the said westerly boundary being the easterly boundary of the province of Manitoba) to the most northerly point of the said boundary common to the two provinces under the said Act ; thence continuing due north along the same meridian to the intersection thereof with the centre of the road allowance on the twelfth base line of the system of Dominion Land Surveys ; thence north-easterly in a right line to the most eastern point of Island Lake, as shown in approximate latitude  $53^{\circ} 30'$  and longitude  $93^{\circ} 40'$  on the railway map of the Dominion of Canada published, on the scale of thirty-five miles to one inch, in the year one thousand nine hundred and eight, by the authority of the Minister of the Interior ; thence north-easterly in a right line to the point where the eighty-ninth meridian of west longitude intersects the southern shore of Hudson Bay ; thence westerly and northerly following the shores of the said Bay to the place of commencement ; and all the land embraced by the said description not now within the province of Manitoba, shall, from and after the commencement of this Act, be added thereto, and the whole shall, from and after the said commencement, form and be the province of Manitoba.

FINANCIAL PROVISIONS.

Annual  
payment to  
province

4.—Inasmuch as the province was not in debt at the time the province was established, it shall be entitled to be paid and to receive from the Government of Canada, by half-yearly payments in advance on the first day of January and July in each year an annual sum of three hundred and eighty-one thousand five hundred and eighty-four dollars and nineteen cents, being the equivalent of interest at the rate of five per cent. per annum on the sum of seven million six hundred and thirty-one thousand six hundred and eighty-three dollars and eighty-five cents, the difference between a principal sum of eight million one hundred and seven thousand five hundred dollars and the sum of four hundred and seventy-five thousand eight hundred and sixteen dollars and fifteen cents heretofore advanced by the Government to the province for provincial purposes.

Commence-  
ment of  
section

2. This section shall be held to have come into force on the first day of July, one thousand nine hundred and eight, and shall have effect as if the first half-yearly payment thereunder was due to be made on that date.

3. There shall be deducted from the aggregate of the sums payable under this section at the commencement of this Act all sums received on and after the first day of July, one thousand nine hundred and eight, by the province from the Government by way of interest on capital allowance in lieu of debt.

Deduction of  
interest on  
capital  
allowance

ADDITIONAL  
APPENDIX OF  
STATUTES

—  
No. 5  
—

An Act to provide  
for the extension  
of the boundaries  
of the Province of  
Manitoba  
(2 George V, Ch. 32)

5.—Inasmuch as under the provisions of this Act the province will not have the public land as a source of revenue, there shall, subject to the provisions hereinafter set out, be paid by the Government to the province, by half-yearly payments in advance, on the first days of  
10 January and July in each year, an annual sum based upon the population of the province as from time to time ascertained by the quinquennial census thereof, as follows:—

Compensation  
to province  
for public  
lands

The population of the province being assumed to be on the first day of July, nineteen hundred and eight, over four hundred thousand, the sum payable until such population reaches eight hundred thousand shall be five hundred and sixty-two thousand five hundred dollars;

Thereafter until such population reaches one million two hundred thousand, the sum payable shall be seven hundred and fifty thousand dollars;

20 And thereafter the sum payable shall be one million one hundred and twenty-five thousand dollars.

2. Section 1 of chapter 50 of the statutes of 1885 is repealed, and all lands (known as swamp lands) transferred to the province under the said section 1, and not sold by the province prior to the time at which the terms and conditions of this Act have been agreed to by the legislature of the province, shall be re-transferred to the Government.

1885, Ch. 50,  
amended

Transfer of  
swamp lands  
to Government

30 3. The sums payable to the province under sub-section 1 of this section shall be subject to a deduction at the rate of five per cent. per annum upon the difference between the aggregate of the sums for which the said swamp lands were sold by the province and the aggregate of the sums from time to time charged to the province by the Government in connection with the selection, survey and transfer of such lands and of the sums expended by the province which may be fairly chargeable to the administration and sale of such swamp lands.

Deduction  
respecting  
swamp lands

4. The difference referred to in the next preceding sub-section shall be determined by the Governor in Council after audit on behalf of the Government.

Determination  
of amount

40 5. The sums payable to the province under sub-section 1 of this section shall also be subject to a deduction by reason of the allotment of land, to the extent of one hundred and fifty thousand acres, granted as an endowment to the University of Manitoba under section 2 of chapter 50 of the statutes of 1885, to wit, to a deduction of five per cent. per annum upon the sum of three hundred thousand dollars.

Deduction  
respecting  
lands granted  
to Manitoba  
University

ADDITIONAL  
APPENDIX OF  
STATUTES

No. 5

An Act to provide  
for the extension  
of the boundaries  
of the Province of  
Manitoba  
(2 George V, Ch. 32)

Commencement  
of payments  
under s-s. 1

Deductions  
respecting  
indemnity  
in lieu of  
public lands

Allowance  
for provincial  
public  
buildings

Crown lands,  
minerals and  
waters

Senate  
representation

Commencement  
of Act

6. This section shall be held to have come into force, in so far as the provisions directing and affecting the half-yearly payments in advance under sub-section 1 of this section are concerned, on the first day of July, nineteen hundred and eight, and shall have effect as if the first half-yearly payment thereunder was due to be made on that date.

7. There shall be deducted from the aggregate of the sums payable under the next preceding sub-section at the commencement of this Act all sums received on and after the first day of July, nineteen hundred and eight, by the province from the Government 10 on account of indemnity in lieu of public lands.

8. As an additional allowance in lieu of public land, there shall be paid by the Government to the province, one-half on the first day of July, nineteen hundred and twelve, and one-half on the first day of July, nineteen hundred and thirteen, to assist in providing for the construction of necessary public buildings, two hundred and one thousand seven hundred and twenty-three dollars and fifty-seven cents, a sum equal to the difference between the total payments made by the Government to each of the provinces of Saskatchewan and Alberta, under The Saskatchewan Act and The Alberta Act, 20 respectively, for the like purposes and the sums already paid by the Government on account of the construction of the Legislative Buildings and the Government House at Winnipeg.

RIGHTS OF CROWN.

6.—All Crown lands, mines and minerals and royalties incident thereto in the territory added to the province under the provisions of this Act, and the interest of the Crown under The Irrigation Act in the waters within such territory shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, subject to the provisions of any Act of the Parliament of Canada 30 with respect to road allowances and roads or trails in force immediately before the coming into force of this Act.

REPRESENTATION IN THE SENATE.

7.—The province shall continue to be represented in the Senate of Canada by four members; provided that such representation may, after the completion of the decennial census of June, nineteen hundred and eleven, be from time to time increased to six by the Parliament of Canada.

COMMENCEMENT OF ACT.

8.—This Act shall come into force on a day to be fixed by 40 proclamation of the Governor in Council published in "The Canada Gazette," but such proclamation shall not be made until after the Legislature of Manitoba shall have consented to the increase of the limits of the province herein provided for, and agreed to the terms, conditions and provisions aforesaid.



An Act for  
increasing, during a  
certain time, the  
yearly Subsidy to  
the Province of  
Manitoba  
(45 Vict., Ch. 5)

## No. 6.

*An Act for Increasing, during a certain time, the Yearly Subsidy to the Province of Manitoba (45 Vict., Ch. 5).*

[Assented to 17th May, 1882.]

Whereas by reason of the greatly increased extent and population of Manitoba, since the subsidy to that Province was fixed by the Act thirty-three Victoria, chapter three, and of the fact that its public lands are administered and the proceeds appropriated by the Dominion Government, it is expedient that the said subsidy be increased : Therefore  
10 Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1.—The following amounts shall be allowed for such subsidy, and paid as hereinafter provided, yearly to the said Province, on and from the first day of January, 1882, that is to say :

For the support of the Government and Legislature ...	\$50,000
On an estimated population of 150,000, at 80 cents per head ... ..	\$120,000
As an indemnity for the want of public lands ... ..	\$45,000

And the said sums shall form the yearly subsidy to be paid by the Dominion to the said Province, during the ten years next after 1881, in lieu of the subsidy allowed by the said Act thirty-three Victoria, chapter three ; and shall be paid out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada.

Preamble

Subsidy for  
ten years  
from  
1st January,  
1882Payable out  
of Con. Rev.  
Fund of  
Canada

ADDITIONAL  
APPENDIX OF  
STATUTES

No. 7

An Act for the  
final settlement of  
the claims made by  
the Province of  
Manitoba on the  
Dominion  
(48-49 Vict., Ch. 50)

No. 7.

*An Act for the Final Settlement of the Claims made by the Province of Manitoba on the Dominion (48-49 Vict., Ch. 50).*

[Assented to 20th July, 1885.]

Preamble

For the final settlement of the claims made by the Province of Manitoba on the Dominion, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

Swamp lands  
to belong to  
the Province

1.—All Crown lands in Manitoba which may be shown to the satisfaction of the Dominion Government to be swamp lands, shall be 10 transferred to the Province and enure wholly to its benefit and uses.

Allotment of  
150,000  
acres for a  
university

2.—An allotment of land, not exceeding one hundred and fifty thousand acres, of fair average quality, shall be selected by the Dominion Government and granted as an endowment to the University of Manitoba for its maintenance as a University capable of giving proper training in the higher branches of education, and to be held in trust for that purpose upon some basis or scheme to be framed by the University and approved by the Dominion Government.

Increase of  
indemnity  
for want of  
public lands

3.—The sum now payable annually to the Province, under the Act forty-fifth Victoria, chapter five, as an indemnity for the want of public 20 lands, shall be increased from forty-five thousand dollars to one hundred thousand dollars—such increase to date from the first day of July, one thousand eight hundred and eighty-five.

Readjustment  
of per capita  
allowance to  
the Province

4.—The yearly per capita allowance to the Province of eighty cents per head, made under the Act thirty-third Victoria, chapter three, on an estimated population of seventeen thousand (increased by forty-fifth Victoria, chapter five, to one hundred and fifty thousand) shall be subject to be increased as hereinafter mentioned, that is to say :—A census of the Province shall be taken in every fifth year, reckoning from the general census of one thousand eight hundred and eighty-one ; and an 30 approximate estimate of the population shall be made on the first day of September now next and at equal intervals of time between each quinquennial and decennial census ; and whenever the population, by any such census or estimate, exceeds one hundred and fifty thousand, which shall be the minimum on which the said allowance shall be calculated, the amount of the said per capita allowance shall be increased accordingly, and so on, until the population shall have reached four hundred thousand souls.

Increase  
proportionate  
to population  
to be allowed  
on census  
and estimate

5.—So much of the said Act, forty-fifth Victoria, chapter five, as relates to the amount of the indemnity for the want of public lands, or the per capita allowance on the population of the Province, is hereby repealed; and the allowances provided by the foregoing sections shall not be limited to the ten years next after the year one thousand eight hundred and eighty-one, or to any other period.

Repeal of  
inconsistent  
enactments

ADDITIONAL  
APPENDIX OF  
STATUTES

—  
No. 7  
—

An Act for the  
final settlement of  
the claims made by  
the Province of  
Manitoba on the  
Dominion  
(48-49 Vict., Ch. 50)

6.—The capital sum on which the Province is entitled to receive half-yearly payments of interest at the rate of five per cent. per annum, as fixed by the Act thirty-third Victoria, chapter three, and as readjusted  
10 or increased by any subsequent Act, shall, from and after the first day of July, one thousand eight hundred and eighty-five, be calculated on a population of one hundred and twenty-five thousand, at the same rate per capita as was allowed on the estimated population, under the Act thirty-third Victoria, chapter three, and shall be charged with such advances as have been already made to the Province, and with such expenditure as has been made therein by the Dominion for purposes of a strictly local character, and with a further sum of one hundred and fifty thousand dollars, which the Dominion Government may advance to the Province to meet the expenditure of constructing a lunatic asylum,  
20 and other exceptional services.

Increase of  
sum on which  
interest is  
payable to  
the Province  
as subsidy

Charges  
thereon

Advance for  
lunatic  
asylum

7.—The grants of land and payments authorised by the foregoing sections shall be made on the condition that they be accepted by the Province (such acceptance being testified by an Act of the Legislature of Manitoba), as a full settlement of all claims made by the said Province for the reimbursement of costs incurred in the government of the disputed territory, or the reference of the boundary question to the Judicial Committee of the Privy Council, and all other questions and claims discussed between the Dominion and the Provincial Government up to the tenth day of January, one thousand eight hundred and eighty-five.

Condition of  
grants and  
payments  
under this  
Act

8.—The sums authorised to be paid by this Act may be paid out of any moneys forming part of the Consolidated Revenue Fund of Canada.

Sums granted  
how payable



ADDITIONAL  
APPENDIX OF  
STATUTES

No. 8

An Act to explain  
the Act intituled  
“ An Act for the  
final settlement of  
the claims made by  
the Province of  
Manitoba on the  
Dominion ”  
(49 Vict., Ch. 8)

No. 8.

*An Act to explain the Act intituled “ An Act for the Final Settlement of the Claims  
“made by the Province of Manitoba on the Dominion ” (49 Vict., Ch. 8).*

[Assented to 2nd June, 1886.]

Preamble

48-49 Vict.,  
Ch. 50

For the removal of all doubts as to the proper construction of section six of the Act passed in the session held in the forty-eighth and forty-ninth years of Her Majesty's reign, chapter fifty, intituled “ An Act for the “ final settlement of the claims made by the Province of Manitoba on “ the Dominion,” Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, declares and enacts as follows :— 10

How the rate  
per capita  
mentioned in  
section 6 of  
the said Act  
shall be  
calculated

1.—Notwithstanding anything in the section above mentioned, it is hereby declared to be the intention thereof that the rate per capita at which the calculations therein mentioned are to be made shall be taken and construed to be the rate per capita ascertained by dividing by seventeen thousand (that is to say, the estimated population of the Province of Manitoba under the Act thirty-third Victoria, chapter three) the sum of five hundred and fifty-one thousand four hundred and forty-seven dollars (being the amount of capital on which the said Province was entitled to receive interest under and by virtue of section twenty-four 20 of the Act last above cited and the Act thirty-sixth Victoria, chapter thirty) ; and the said section six of the Act cited in the preamble of this Act shall be construed as if the provisions hereof had been made therein : Provided always, that nothing herein contained shall be taken or construed as in any way varying or altering any other provision of the said section or of the Act cited in the preamble, not inconsistent herewith or repugnant hereto.

Proviso

## No. 9.

## No. 9

*An Act respecting Claims to Lands in Manitoba for which no Patents have issued*  
(36 Vict., Ch. 6).

[Assented to 3rd May, 1873.]

An Act respecting  
claims to lands in  
Manitoba for which  
no Patents have  
issued  
(36 Vict., Ch. 6)

Her Majesty, by and with the advice and consent of the Senate and  
House of Commons of Canada, enacts as follows :—

Preamble

1.—The Governor may, from time to time, issue such and so many  
Commissions, under the Great Seal, to the Chief Justice and the Puisne  
Judges of the Court of Queen's Bench of Manitoba, and such other persons  
as he shall see fit, empowering them, or any three of them, of whom the  
said Chief Justice or one of the Puisne Judges shall be one, to ascertain  
and declare in all cases brought before them under the provisions of this  
Act, who is the person to whom the patent ought to issue for the lands  
to which the claims shall respectively relate.

Commissioners  
may be  
appointed,  
and

for what  
purpose

2.—The sittings of the Commissioners shall be held at the time and  
place of the sittings of the County Court in each of the Counties in  
Manitoba, and may continue from day to day, as long as any business  
is before them, during the period occupied by the sittings of the County  
Court, and such additional period not exceeding five days as the  
Commissioners or a majority of them may decide.

Sittings of  
Commissioners

3.—The Clerk of the County Court of each County in Manitoba  
shall be the Clerk of the said Commissioners.

Clerk of  
Commissioners

4.—Every person claiming any lands within Manitoba, for which  
no patent has issued, as being entitled thereto :—

Persons  
claiming  
unpatented  
lands, viz.

1st. As grantee in freehold under a grant made by the Hudson's  
Bay Company up to the eighth day of March in the year of Our  
Lord one thousand eight hundred and sixty-nine ;

Grantee in  
freehold  
Hudson's Bay  
Company

2nd. As grantee of an estate less than freehold under a grant  
made by the Hudson's Bay Company up to the same date ;

Grantees of  
estates less  
than freehold

3rd. As entitled thereto by occupancy with the sanction, and  
under the licence and authority of the Hudson's Bay Company up  
to the same day, of land in that part of the Province in which the  
Indian title has been extinguished ;

Occupants  
under licence

4th. As having been in peaceable possession of a tract of land  
at the time of the transfer to Canada in those parts of the Province  
in which the Indian title has not been extinguished ;

Occupants in  
peaceable  
possession

or the heir, devisee or assignee of any such person, may bring his claim

Heirs or  
devisees

ADDITIONAL  
APPENDIX OF  
STATUTES

—  
No. 9  
—

An Act respecting  
claims to lands in  
Manitoba for which  
no Patents have  
issued,  
(36 Vict., Ch. 6)

Mode of  
procedure

What shall  
be received  
in evidence

Who may be  
summoned as  
witnesses

Mode of  
examination

On whom  
interrogatories  
may be served

Commissions  
may be issued  
for examination  
of non-  
residents

Commissioners  
not to  
proceed in  
the absence  
of an affidavit  
that the  
claim is just

Proceedings  
with respect  
to adverse  
claims

before the said Commissioners either personally or by his agent or attorney, and produce before the said Commissioners all such documents, proofs and evidence as he may have to advance in support of such claim ; and such evidence may be given viva voce before the said Commissioners or by written affidavits or affirmations sworn or affirmed before any one entitled to administer an oath or affirmation where the same is sworn or affirmed.

5.—All certificates of the Hudson's Bay Company or of any Chief Factor of the Hudson's Bay Company or of the Clerk of the Executive Council of Manitoba, or copies certified by them respectively, of documents in their custody, shall be received in evidence before the said Commissioners. 10

6.—The said Commissioners may summon before them, by summons under the hand of any one of them, either the claimant or any person interested in the case, or any other person whom they deem it expedient to examine as a witness, or whom they have reason to believe to be in possession of any document by the production of which the ends of justice may be better attained ; and may require such claimant or party or such witness to submit to such oral examination upon oath, or to answer on oath and to sign his answers to interrogatories or cross interrogatories in writing, or to produce such books, papers or documents in his possession, as to the said Commissioners appear requisite. 20

7.—The said Commissioners may cause such interrogatories or cross-interrogatories as they deem requisite to be served upon and answered by any such claimant, party or witness, or any witness whose deposition may be produced in evidence before them ; and may cause commissions to be issued for the examination of any witness not resident in Manitoba, and for requiring such witness to produce such books, papers, or other documents as he may have in his possession ; and may at their discretion delay the proceedings in the case until such evidence and answers have been adduced and given. 30

8.—The said Commissioners shall not receive or proceed upon any claim until the party by whom (or on whose behalf the same is made, or if such party consist of more than one person, then until some one of such persons) has made and produces before the said Commissioners, an affidavit or affirmation in writing signed by him, that such claim is just and well-founded to the best of his knowledge and belief, and that he is not aware of any adverse claim ; or if he is aware of any adverse claim, that he has at least one month before the making of such affidavit or affirmation, caused to be served on the party having, or supposed to have, such adverse claim, notice in writing of his claim and of his intention to bring the same before the said Commissioners, and of the time when it is intended to be so brought ; and a copy of such notice shall be annexed to the affidavit or affirmation. 40



9.—A list of all the lands coming within or believed to come within the purview of this Act shall be prepared by the Surveyor-General of Dominion Lands, and such list shall specify the name or names of the person or persons in possession, together with the number of the section, or part of section, range and number of township of which the land consists or forms part, or some other adequate description thereof, and of the township or place in which the same lies ; and copies of such list shall be put up in some conspicuous place in the office of the Clerk of the Court of Queen's Bench of Manitoba at Winnipeg, and in the office of the Clerk of each of the County Courts of the Province of Manitoba, and in the office of the Registrar of each of the said counties during at least three months before the claim comes to be heard before the Commissioners ; and such list shall be read in open court every day of the sittings thereof next after the putting up of such list ; and no claim shall be heard by the said Commissioners unless a certificate of compliance with the provisions of this clause from the Clerk of the Court and Registrar of the County shall be produced to the said Commissioners.

Names of claimants and the lands claimed to be conspicuously posted

ADDITIONAL  
APPENDIX OF  
STATUTES

—  
No. 9  
—

An Act respecting claims to lands in Manitoba for which no Patents have issued  
(36 Vict., Ch. 6)

10.—The Clerk of the Court of Queen's Bench of Manitoba shall, once in every three months, make a list of the claims so put up in his office, specifying therein the particulars of such claims in the manner in which they are hereinbefore required to be specified in the notice to be put up ; and shall affix such list in some conspicuous part of the Court House or place in which the courts are held in Winnipeg ; and shall cause the said list to be publicly read and proclaimed in open court immediately after the delivery of the charge to the Grand Jury ; and for each certificate the Clerk of the Court of Queen's Bench may demand and receive the sum of fifty cents, and no more.

List of claims to be made ; how often and by whom

To be publicly read

Fee on each certificate

11.—The said Commissioners may defer, delay or adjourn the proceedings on any claim brought before them, and may give such further or enlarged time for the production of evidence, or for any other purpose relative to such claim, and for the decision thereon, as they may deem expedient for the attainment of the ends of justice.

Commissioners, for cause shown, may delay proceedings

12.—After the said Commissioners have fully examined any such claim, they may either reject or allow the same as in their judgment the justice and equity of the case requires, without regard to legal forms or to the strict letter of the law, or legal rules of evidence ; and shall report their decision to the Governor in Council, and such reports shall be final and conclusive (except in the case hereinafter mentioned) ; and the Governor in Council shall direct Her Majesty's Letters Patent under the Great Seal to issue, for granting the lands in question to the party who has been determined by the decision of the Commissioners to be entitled to the same.

The Commissioners may reject or allow claims

Their decision final

Letters Patent to issue thereon

13.—In the event of the Chief Justice or Puisne Judge, forming one of the Commissioners hearing a claim, dissenting from the decision of the majority of the said Commissioners, the party against whom the

If any Judge dissents from decision

ADDITIONAL  
APPENDIX OF  
STATUTES

No. 9

An Act respecting  
claims to lands in  
Manitoba for which  
no Patents have  
issued  
(36 Vict., Ch. 6)

When such  
Letters  
Patent shall  
be issued

When the  
issue of  
Letters  
Patent  
shall be  
stayed

The  
Commissioners  
may re-hear  
the case

Commissioners  
to make rules  
with regard  
to their own  
proceedings

Right to  
patent may  
be transferred  
and registered

Proof  
required in  
support of  
claims for  
patents, when  
original  
nominees  
are dead

When such  
patents may  
be issued

Claim before  
Commissioners  
not barred

decision has been made may call for the interposition of the remaining Judges of the Court of Queen's Bench ; and the decision shall not have force unless such Court or a majority of the members thereof shall concur therein.

14.—No Letters Patent shall issue on any decision and report of the said Commissioners until after the expiration of three months from the time such report has been transmitted to and marked as received by the Clerk of the Privy Council.

15.—If before the expiration of such three months a quorum of the said Commissioners, from any representation made to them, find 10  
reason to believe that such decision and report were obtained by surprise or erroneously made in any respect, and that justice requires that the issuing of the Letters Patent should be stayed, then such quorum of the said Commissioners, although not then the regular period of their sitting, may report accordingly to the Governor in Council ; and issuing of the Letters Patent shall be thereupon stayed until the Commissioners again report upon the case ; and the said Commissioners may re-hear the case or let in any new claim, and receive or insist upon any new evidence as to them may appear expedient to enable them to do justice in the case, and may thereafter decide and report thereon as if no prior 20  
decision and report had been made, and with like effect.

16.—The Commissioners for the time being may from time to time make and establish such rules and forms, with regard to any proceedings to be had before them, and to such notices, papers, and other documents as may be required in the conduct of such proceedings, as to them appear expedient for the better attainment of the purposes of justice.

17.—Any person whose right to obtain a patent for lands has been established by any Commissioners under this Act may, by an instrument in writing, assign, transfer, and convey his right and interest to or in such land ; and such assignment, as well as all subsequent assignments, 30  
may be registered in the Dominion Lands Office ; and the last assignee shall be entitled to a patent upon proving compliance with all the conditions to which the original location was subject.

18.—In any application for a patent by the heir, assignee or devisee of the person originally entitled to any land, the Minister charged with the administration of Dominion Lands may receive proof in such manner as he may direct and require in support of the claim for a patent when the original nominee is dead ; and upon being satisfied that the claim has been equitably and justly established, he may report the same to the Governor in Council, and if approved, the patent may issue to the party 40  
named in the Order in Council founded on such report, or to his assignee without the intervention of the said Commissioners ; but nothing in this clause contained shall limit the right of the party claiming a patent to make application at any time to the said Commissioners.

## No. 10.

## No. 10

*An Act respecting Conflicting Claims to Lands of Occupants in Manitoba*  
(38 Vict., Ch. 53).An Act respecting  
conflicting claims to  
lands of occupants  
in Manitoba  
(38 Vict., Ch. 53)

[Assented to 8th April, 1875.]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

Preamble

1.—The Governor may, from time to time, issue a Commission under the Great Seal, to such person or persons as he shall see fit, empowering him or them, or a majority of them, to investigate such cases as may be referred to them by the Minister charged with the administration of Dominion Lands, in respect of the following matters :—

Commission  
to issue for  
report on  
such claims

1. Any such cases as may arise under the first and second sub-sections of the thirty-second section of the Act thirty-third Victoria, chapter three, and

In what cases

20 2. Any cases of adverse or conflicting claims between different persons to lands mentioned in the third and fourth sub-sections of the last-mentioned Act, as the same are defined by the Act passed in the present session of Parliament, intituled : “An Act to amend an “Act respecting the appropriation of certain lands in Manitoba,” in respect of which also it has been previously established to the satisfaction of the Minister charged with the administration of Dominion lands that there has been undisturbed occupancy of the same as defined as last aforesaid ;

The same

38 Vict.,  
Ch. 52

And to report the evidence in respect of such claims, and who is the person to whom in their opinion the patent ought to issue for the lands to which the claims shall respectively relate.

To report

30 2.—The sittings of the Commissioners shall be held at the place of the sittings of the County Court in each of the Counties of Manitoba, and the time and place of such sittings shall be advertised by the Commissioners for a period of three months in some newspaper in Manitoba together with a list of claims to be heard before them, and they shall give such other notice of the time and place of such sittings as will best tend to inform parties interested in the same.

Sittings of the  
Commission

Notice

3.—The claimant, or the heir, devisee or assignee of any claimant, may bring any such adverse or conflicting claim before the said Commissioners either personally or by agent or attorney, and produce before the said Commissioners all such documents, proofs and evidence as he may have to advance in support of such claim ; and such evidence

Claim and  
evidence to  
be submitted



ADDITIONAL  
APPENDIX OF  
STATUTES

No. 10

An Act respecting  
conflicting claims to  
lands of occupants  
in Manitoba  
(38 Vict., Ch. 53)

Certain  
documents  
to be received  
in evidence

Examination  
of claimants  
and others

Commission  
to examine  
witnesses,  
and issue  
commissions  
for that  
purpose

Claim must  
be sworn to  
be just before  
being received

Surveyor-  
General to  
make list of  
lands within  
the provisions  
of this Act

may be given viva voce before the said Commissioners or by written affidavits or affirmations sworn or affirmed before any one entitled to administer an oath or affirmation in the place where the same is sworn or affirmed.

4.—All certificates of the Hudson Bay Company, or of any Chief Factor of the Hudson Bay Company, or of the Clerk of the Executive Council of Manitoba, or copies certified by them respectively, of documents in their custody, shall be received in evidence before the said Commissioners.

5.—The Commissioners may summon before them, by summons 10 under the hand of any one of them, the claimant or claimants or any person interested in the case, or any other person whom they deem it expedient to examine as a witness, or whom they have reason to believe to be in possession of any document by the production of which the ends of justice may be better attained; and may require such claimant or party, or such witness to submit to such oral examination upon oath, or to answer on oath and to sign his answers to interrogatories or cross interrogatories in writing, or to produce such books, papers or documents in his possession, as to the said Commissioners appear requisite.

6.—The Commissioners may cause such interrogatories or cross 20 interrogatories as they deem requisite to be served upon and answered by any such claimant, party, or witness, or any witness whose deposition may be produced in evidence before them; and may cause commissions to be issued for the examination of any witness not resident in Manitoba, and for requiring such witness to produce such books, papers, or other documents as he may have in his possession; and may at their discretion delay the proceedings in the case until such evidence and answers have been adduced and given, and returned with the commission.

7.—The Commissioners shall not receive or proceed upon any claim 30 until each of the adverse or conflicting claimants has made and produces before the Commissioners an affidavit or affirmation in writing signed by him, that such claim is just and well founded to the best of his knowledge and belief, and that he has at least one month before the making of such affidavit or affirmation caused to be served on the party having, or supposed to have, such adverse claim, notice in writing of his claim and of his intention to bring the same before the said Commissioners, and of the time when it is intended to be so brought; and a copy of such notice shall be annexed to the affidavit or affirmation.

8.—A list of all lands coming within or believed to come within the 40 purview of this Act shall, from time to time, as may be necessary, be prepared by the Surveyor-General of Dominion Lands; and such list shall specify the name or names of the person or persons in possession together with the number of the section, part of section, range and number of township of which the land consists or forms part, or some other

adequate description thereof, and of the township or place in which the same lies ; and copies of such list shall be put up in some conspicuous place in the office of each of the County Courts of the Province of Manitoba, and in the office of the Registrar of each of the said counties, during at least three months before the claim comes to be heard before the Commissioners ; and no claim shall be heard by the said Commissioners unless a certificate of compliance with the provisions of this section from the Clerk of the Court and Registrar of the county shall be produced to the Commissioners, and for each certificate the Clerk of the County

10 Court and Registrar of the county may each demand and receive the sum of fifty cents, and no more.

Copies to be  
posted up

ADDITIONAL  
APPENDIX OF  
STATUTES

—  
No. 10

—  
An Act respecting  
conflicting claims to  
lands of occupants  
in Manitoba  
(38 Vict., Ch. 53)

9.—The Commissioners may defer, delay or adjourn the proceedings on any claim brought before them, and may give such further or enlarged time for the production of evidence, or for any other purpose relative to such claim, and for the decision thereon, as they may deem expedient for the attainment of the ends of justice.

Power to  
adjourn  
proceedings

10.—The Commissioners shall be guided in their proceedings and report by the justice and equity of the case, without regard to legal forms or to the strict letter of the law, or legal rules of evidence ; and

20 shall report their decision to the Minister charged with the administration of Dominion Lands, who may, if he thinks fit, thereupon cause Her Majesty's Letters Patent under the Great Seal to issue, for granting the lands in question to the party who has been reported by the Commissioners as entitled to the same, or otherwise at his discretion to submit the same for the consideration and approval of the Governor in Council.

Commissioners  
not bound  
by forms

To report to  
the Minister

11.—No Letters Patent shall issue on any decision and report of the said Commissioners until after the expiration of three months from the time such report has been transmitted to and marked as received by the

30 Minister aforesaid.

When only  
the patent  
may issue

12.—If, before the expiration of such three months, the Commissioner, or in case there be more than one, a quorum of the Commissioners, or a majority of them, find reason to believe that such decision and report were obtained by surprise or erroneously made in any respect, and that justice requires that the issuing of the Letters Patent should be stayed, then the said Commissioner or Commissioners, or a majority of them, although it be not then the regular period of their sitting, may report accordingly to the said Minister, and issuing of the Letters Patent shall be thereupon stayed until the Commissioners again report upon the

40 case ; and the said Commissioners may re-hear the case, or let in any new claim, and receive or insist upon any new evidence, as to them may appear expedient to enable them to do justice in the case ; and may thereafter decide and report thereon as if no prior report had been made, and with like effect.

Re-hearing  
and new  
report allowed  
in certain  
cases

APPENDIX OF  
ADDITIONAL  
STATUTES—  
No. 10  
—

An Act respecting  
conflicting claims to  
lands of occupants  
in Manitoba  
(38 Vict., Ch. 53)

Rules and  
forms of  
proceeding

Interpretation

Right of  
Minister  
saved

36 Vict.,  
Ch. 6,  
repealed

**13.**—The Commissioners for the time being may, from time to time, make and establish such rules and forms, with regard to any proceedings to be had before them, and to such notices, papers and other documents as may be required in the conduct of such proceedings, as to them may appear expedient, for the better attainment of the purposes of justice.

**14.**—The word “Commissioners” shall mean the Commissioner in cases in which the Commission may be issued to one person only.

**15.**—Nothing in this Act contained shall limit the right of the Minister charged with the administration of Dominion Lands to investigate, or cause to be otherwise investigated, than is hereinbefore 10 mentioned, such adverse or conflicting claims as aforesaid, and to cause Letters Patent to issue therefor to the party appearing to him to be entitled thereto.

**16.**—The Act passed in the thirty-sixth year of Her Majesty’s reign, intituled: “An Act respecting claims to lands in Manitoba, for which “no patents have issued,” is hereby repealed.



## No. 11.

## No. 11

*An Act respecting Claims to Certain Lands in the Province of Manitoba*  
(49 Vict., Ch. 48, R.S.C. 1886).An Act respecting  
claims to certain  
lands in the  
Province of  
Manitoba (49 Vict.,  
Ch. 48, R.S.C., 1886)

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

## INTERPRETATION.

1.—In this Act, unless the context otherwise requires :—

Interpretation

(A) The expression “ the Province ” means the Province of Manitoba.

“ Province ”

(B) The expression “ Commissioners ” includes the Commissioner in cases in which the Commission is issued to one person only.

“ Commis-  
sioners ”

(38 V., c. 53, s. 14.)

## QUIETING OF TITLES.

2.—All grants of land in freehold made by the Hudson's Bay Company up to the eighth day of March, in the year one thousand eight hundred and sixty-nine, shall, if required by the owner, be confirmed by grant from the Crown.

Grants in  
freehold  
confirmed

2. All grants of estates less than freehold in land, made by the Hudson's Bay Company up to the eighth day of March aforesaid shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

Certain other  
grants to be  
freehold

3. All persons who satisfactorily establish undisturbed occupancy of any lands within the Province prior to, and who were, by themselves or their servants, tenants or agents, or those through whom they claim, in actual peaceable possession thereof on the fifteenth day of July, one thousand eight hundred and seventy, shall be entitled to receive letters patent therefor, granting the same absolutely to them respectively in fee simple: Provided always, that from and after the first day of May, which will be in the year one thousand eight hundred and eighty-six, all the rights and claims given by this sub-section shall, in so far as respects rights to claims for grants from the Crown, with respect to which application has not been made to the Department of the Interior before the day last aforesaid, cease and determine.

Title to land  
by occupancyProviso : time  
for claims  
limited

4. All such claims made before the said first day of May, in the year one thousand eight hundred and eighty-six, but which the claimants have not, before the expiration of six months after the said day, established to the satisfaction of the Minister of the Interior, shall be barred as fully and effectually as if such claims had not been made; but nothing in this sub-section shall apply to claims

Effect of  
failure to  
prefer claims

ADDITIONAL  
APPENDIX OF  
STATUTES

No. 11

An Act respecting  
claims to certain  
lands in the  
Province of  
Manitoba (49 Vict.,  
Ch. 48, R.S.C., 1886)

Exception

Commission  
may be  
appointed  
to consider  
certain cases

Report

Sittings  
of the  
Commissioners

Preliminary  
proceedings  
before claim  
is considered

made before the said first day of May, one thousand eight hundred and eighty-six, and which, before the expiration of six months thereafter, have been referred to the Commissioner or Commissioners under the following provisions of this Act. (33 V., c. 3, s. 32, part; 38 V., c. 52, s. 1 ; 43 V., c. 7, ss. 1 and 2 ; 47 V., c. 26, s. 1.)

CONFLICTING CLAIMS TO LANDS.

3.—The Governor in Council may, from time to time, issue a Commission under the Great Seal, to such person or persons as he sees fit, empowering him or them, or a majority of them, to investigate such cases as are referred to them by the Minister of the Interior, in respect of the following matters :— 10

- (A) Any such cases as arise under the first and second sub-sections of the next preceding section of this Act ; and
- (B) Any cases of adverse or conflicting claims between different persons to lands mentioned in the third sub-section of the said section, in respect of which also it has been previously established, to the satisfaction of the Minister of the Interior, that there has been undisturbed occupancy of the same, as defined in the said third sub-section ;

And to report the evidence in respect of such claims, and who is the person to whom, in their opinion, the patent ought to issue for the lands to which the claims respectively relate. (38 V., c. 53, s. 1.) 20

4.—The sittings of the Commissioners shall be held at the place of the sittings of the county court in each of the counties of the Province, and the time and place of such sittings shall be advertised by the Commissioners, for a period of three months, in some newspaper in the Province, together with a list of claims to be heard before them, and they shall give such other notice of the time and place of such sittings as will best tend to inform persons interested in the same. (38 V., c. 53, s. 2.)

5.—The Commissioners shall not receive or proceed upon any claim until the person, or some one of the persons, by whom or on whose behalf the same is made, has made and produced before the Commissioners an affidavit or affirmation in writing, signed by him, that to the best of his knowledge and belief the claim is well founded, that he is not aware of any adverse claims, and that there is no other person in possession ; or if he is aware of any adverse claim, or that there is any other person in possession, that he has, at least one month before the making of such affidavit or affirmation, caused to be served upon the person making, having, or supposed to have such adverse claim, or who is in possession as aforesaid, a notice in writing of his claim and of his intention to bring the same before the Commissioners at the time appointed by them for hearing the claims of the respective parties ; and a copy of such notice shall be affixed to the affidavit or affirmation. (41 V., c. 14, s. 1.) 30 40

6.—A list of all lands to which this Act applies, or is believed to apply, shall from time to time, as is necessary, be prepared by the Surveyor-General of Dominion Lands ; and such list shall specify the name or names of the person or persons in possession, together with the number of the section, part of section, range and number of township of which the land consists or forms part, or some other adequate description thereof, and of the township or place in which the same lies ; and copies of such list shall be put up in some conspicuous place in the office of each of the county courts of the Province, and in the office of the registrar of each of the said counties, during at least three months before the claim comes to be heard before the Commissioners ; and no claim shall be heard by the said Commissioners unless a certificate of compliance with the provisions of this section, from the clerk of the court and registrar of the county, is produced to the Commissioners ; and for each certificate the clerk of the county court and registrar of the county may each demand and receive the sum of fifty cents. (38 V., c. 53, s. 8.)

List to be prepared

What it shall specify

To be posted up

Certificate of compliance with foregoing provisions

ADDITIONAL  
APPENDIX OF  
STATUTES

—  
No. 11  
—

An Act respecting  
claims to certain  
lands in the  
Province of  
Manitoba (49 Vict.,  
Ch. 48, R.S.C., 1886)

7.—The claimant, or the heir, devisee or assignee of any claimant, may bring any such adverse or conflicting claim before the said Commissioners, either personally or by agent or attorney, and produce before the said Commissioners all such documents, proofs and evidence as he has to advance in support of such claim ; and such evidence may be given viva voce before the said Commissioners, or by written affidavits or affirmations, sworn or affirmed before any one entitled to administer an oath or affirmation in the place where the same is sworn or affirmed. (38 V., c. 53, s. 3.)

How claim may be preferred

Evidence

8.—All certificates of the Hudson's Bay Company, or of any chief factor of the Hudson's Bay Company, or of the clerk of the Executive Council of the Province, or copies certified by them respectively, of documents in their custody, shall be received in evidence before the said Commissioners. (38 V., c. 53, s. 4.)

Certain documents to be evidence

9.—The Commissioners may summon before them, by summons under the hand of any one of them, the claimant or claimants, or any person interested in the case, or any other person whom they deem it expedient to examine as a witness, or whom they have reason to believe to be in possession of any document by the production of which the ends of justice may be better attained ; and may require such claimant or person or such witness to submit to such oral examination upon oath, or to answer on oath and to sign his answers to interrogatories or cross interrogatories in writing, or to produce such books, papers or documents in his possession, as to the said Commissioners appear requisite. (38 V., c. 53, s. 5.)

Witnesses may be summoned

And required to give evidence

10.—The Commissioners may cause such interrogatories or cross interrogatories as they deem requisite to be served upon and answered by any such claimant, person or witness, or any witness whose deposition

Interrogatories



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No. 11.

An Act respecting  
claims to certain  
lands in the  
Province of  
Manitoba (49 Vict.,  
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Commissions  
to examine

Attendance  
may be  
enforced

Proviso

Adjournment  
of proceedings

Decision, how  
arrived at

Effect of  
decision

When letters  
patent may  
issue

Report in case  
of erroneous  
decision

Re-hearing

is produced in evidence before them ; and may cause commissions to be issued for the examination of any witness not resident in Manitoba, and for requiring such witness to produce such books, papers or other documents as he has in his possession ; and may, in their discretion, delay the proceedings in the case until such evidence and answers have been adduced and given, and returned with the Commission. (38 V., c. 53, s. 6.)

11.—The Commissioners shall have the same power to enforce the attendance of witnesses, and to compel them to give evidence, as is vested in any court of law in civil cases ; but no person or witness shall be compelled to answer any question that he would not be compelled to answer in a court of law in a civil case. (41 V., c. 14, s. 2, part.) 10

12.—The Commissioners may defer, delay or adjourn the proceedings on any claim brought before them, and may give such further or enlarged time for the production of evidence, or for any other purpose relative to such claim, and for the decision thereon, as they deem expedient for the attainment of the ends of justice. (38 V., c. 53, s. 9.)

13.—The Commissioners shall be guided in their proceedings and report by the justice and equity of the case, without regard to legal forms or to the strict letter of the law, or legal rules of evidence ; and they shall report their decision to the Minister of the Interior, who may, if he thinks fit, thereupon cause letters patent to issue, granting the lands in question to the person who has been reported by the Commissioners to be entitled to the same, or otherwise, in his discretion, may submit the same for the consideration and approval of the Governor in Council. (38 V., c. 53, s. 10.) 20

14.—No letters patent shall issue on any decision and report of the Commissioners until after the expiration of three months from the time when such report was transmitted to and marked as received by the Minister of the Interior. (38 V., c. 53, s. 11.)

15.—If, before the expiration of such three months, the Commissioners or a quorum or majority of them find reason to believe that such decision and report were obtained by surprise or erroneously made in any respect, and that justice requires that the issuing of the letters patent should be stayed, the Commissioners, or a majority of them, although it is not then the regular period of their sitting, may report accordingly to the said Minister, and the issuing of the letters patent shall thereupon be stayed until the Commissioners again report upon the case ; and the Commissioner may re-hear the case, or admit any new claim, and may receive or insist upon any new evidence, as to them appears expedient to enable them to do justice in the case ; and they may thereafter decide and report thereon as if no prior report had been made, and with like effect. (38 V., c. 53, s. 12.) 30 40

16.—The Commissioners may, from time to time, make and establish such rules and forms, with regard to any proceedings to be had before them, and to such notices, papers and other documents as are required in the conduct of such proceedings, as to them appear expedient, for the better attainment of the purposes of justice. (38 V., c. 53, s. 13.)

Rules and  
forms may be  
prescribed

ADDITIONAL  
APPENDIX OF  
STATUTES

No. 11

17.—Nothing in this Act contained shall limit the right of the Minister of the Interior to investigate, or cause to be otherwise investigated than is hereinbefore mentioned, such adverse or conflicting claims as aforesaid, and to cause letters patent to issue therefor to the person appearing to  
10 him to be entitled thereto. (38 V., c. 53, s. 15.)

Certain rights  
not affected

An Act respecting  
claims to certain  
lands in the  
Province of  
Manitoba (49 Vict.,  
Ch. 48, R.S.C., 1886)

*An Act respecting the Province of Manitoba (R.S.C. 1906, Ch. 99).*

SHORT TITLE.

Short title      1.—This Act may be cited as the Manitoba Supplementary Provisions Act.

INTERPRETATION.

Definitions      2.—In this Act, unless the context otherwise requires :—  
 (A) “ Province ” means the Province of Manitoba ;  
 (B) “ Minister ” means the Minister of the Interior ; and  
 (C) “ Commissioners ” includes the Commissioners in cases in which 10  
 the commission is issued to one person only. (R.S., c. 48, s. 1.)

PART I.

GENERAL.

Swamp lands to the Province      3.—All Crown lands in Manitoba which are shown to the satisfaction of the Dominion Government to be swamp lands shall be transferred to the Province and enure wholly to its benefit and uses. (R.S., c. 47, s. 4.)

Allotment of 150,000 acres for a university      4.—An allotment of land, not exceeding one hundred and fifty thousand acres, of fair average quality, shall be selected by the Dominion Government and granted as an endowment to the University of Manitoba for its maintenance as a university capable of giving proper training in 20 the higher branches of education, and to be held in trust for that purpose upon some basis or scheme to be framed by the University and approved by the Dominion Government. (R.S., c. 47, s. 5.)

Rate of interest      5.—Whenever, between the fifteenth day of July, one thousand eight hundred and seventy, and the first day of March one thousand eight hundred and eighty-seven, interest was payable in the Province by the agreement of parties or by law, and no rate was fixed by such agreement or by such law, interest shall be allowed at the rate of six per centum per annum. (51 V., c. 33, s. 2.)

Laws in force in Manitoba      6.—Subject to the provisions of this Act, the laws of England 30 relating to matters within the jurisdiction of the Parliament of Canada, as the same existed on the fifteenth day of July, one thousand eight hundred and seventy, were from the said day and are in force in the Province, in so far as applicable to the Province, and in so far as the said laws have not been or are not hereafter repealed, altered, varied, modified or affected by any Act of the Parliament of the United Kingdom, applicable to the Province, or of the Parliament of Canada. (51 V., c. 33, s. 1.)



## PART II.

## ROADS AND ROAD ALLOWANCES.

ADDITIONAL  
APPENDIX OF  
STATUTES

No. 12

Manitoba Supple-  
mentary Provisions  
Act (R.S.C. 1906,  
Ch. 99)

7.—All road allowances in townships surveyed and subdivided, and all road allowances set out on block lines surveyed, in the Province shall be vested in the Crown in the right of the Province ; and it is hereby declared that all road allowances in townships heretofore surveyed and subdivided, and all road allowances set out on block lines heretofore surveyed in the Province, shall be deemed to have become the property of the Crown in the right of the Province upon the confirmation of the survey. (58-59 V., c. 30, s. 1.)

Certain road  
allowances the  
property of the  
Province

8.—On the survey and subdivision of any township within the Province, and the approval of such survey and subdivision of any township, the fact shall be notified to the Lieutenant Governor by the Minister, and by virtue of such notification all section road allowances in such township shall become the property of the Province. (R.S., c. 49, s. 2.)

Section road  
allowances in  
townships  
belong to the  
Province

9.—On the Government of Canada receiving notice from the Government of the Province of the particular thoroughfares or public travelled roads or trails in the Province which existed as such on the fifteenth day of July, one thousand eight hundred and seventy, and which the Government of the Province desires to have transferred to the Province, the Governor in Council may pass an order directing the same to be forthwith surveyed by a Dominion land surveyor, and thereafter may transfer each such thoroughfare, public travelled road, or trail, according to the plan and description thereof, to the Province, subject to any right acquired under patents for any lands crossed thereby, issued previously to the receipt of such notice. Provided that except those public thoroughfares in the Province which are designated as great highways by the first section of the Act of the legislature of Manitoba, passed in the thirty-fourth year of Her late Majesty's reign, chapter thirteen (the width of which shall be two chains), no such thoroughfare, public travelled road or trail as hereinbefore mentioned, transferred to the Province, shall be held to have a greater width than one and one-half chains, or ninety-nine feet. (R.S., c. 49, s. 3.)

Roads existing  
on 15th July  
1870, may be  
transferred to  
the Province

10.—The Minister shall cause roads to be laid out, in survey of the outer two miles, known as the hay privilege, granted or proposed to be granted to the owners of the front lots in the old parishes, as follows :—

Roads in the  
outer two miles

(A) a road one chain and fifty links wide in rear of the farms fronting on the Red and Assiniboine rivers, and between the said farms and the corresponding lots in the outer two miles or hay privilege before mentioned ;

In rear and  
between certain  
farms

(B) a road one chain and fifty links wide in rear of the lots contained in the outer two miles or hay privilege before mentioned, and between them and the sections, or legal subdivisions thereof,

Between the  
outer two miles  
and sections  
bounding  
thereon

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mentary Provisions  
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Between lots in  
outer two miles

Where to be  
laid out

Compensation  
for lands

Transfer by  
Governor in  
Council

Land vested  
in Province

Road not to  
be closed or  
altered without  
consent of  
Governor in  
Council

Opening of  
colonization  
roads

bounding the same, except in cases where the said rear boundary of the said lots proves to be a regular section line in the township survey ;

(c) roads, each one chain in width, at convenient distances, say every two miles or thereabouts, between lots in the said outer two miles, and running from the front to the rear thereof.

2. The roads provided for in the last foregoing paragraph shall be laid out between such lots as the Minister indicates with that view, and shall be taken half off each of such lots, or the whole width off one of such lots, in the discretion of the Minister.

10

3. The persons to whom such lots have been granted, or to whom it is proposed to grant such lots, may be compensated by the Minister for the quantity of land respectively contributed by them to any such road, by the issue of land scrip to them at the rate of one dollar and fifty cents for each acre of land so contributed. (R.S., c. 49, s. 4.)

11.—The Governor in Council, may, on the report of the Minister, transfer to the Crown in the right of the Province :—

(A) The several roads provided for by the last preceding section ;

(B) all road allowances around, adjoining, or leading to park lots or portions of sections within the outer two miles of any parish in the Province, as such road allowances are shown on the plan of the Dominion Government survey of such outer two miles ;

20

(c) all road allowances between lots in the inner two miles of any parish in the Province, as such road allowances are shown on the plan of the Dominion Government survey of such inner two miles. (58-59 V., c. 30, s. 2.)

12.—The unpatented land forming part of any road transferred to the Crown in the right of the Province by or under this Part, or declared by this Part to be the property of the Crown in the right of the Province shall be vested in the Crown as aforesaid.

30

2. No such road shall be closed up or its direction varied, or any part of the land occupied by it sold or otherwise alienated, without the consent of the Governor in Council : Provided that in the case of any such road situate within the limits of an organized municipality within the Province the consent of the Lieutenant Governor in Council shall alone be necessary. (58-59 V., c. 30, s. 3.)

13.—The Lieutenant Governor of Manitoba in Council may, at any time, with the consent of the Governor in Council, where it is deemed advisable to do so for the purposes of settlement and colonization, direct roads to be opened through any unpatented lands, whether occupied or not, and whether such lands have been homesteaded, pre-empted,

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set apart or reserved for the benefit or use of any person; and the Governor in Council may thereafter, on the report of the Minister, transfer such roads to the Crown in the right of the Province. (58-59 V., c. 30, s. 7.)

14.—Until the survey and transfer to the Crown in the right of the Province of any road, road allowance, trail, highway or great highway, the Attorney General of Manitoba may take such proceedings as are necessary to keep open any road, trail, road allowance, highway or great highway heretofore used or opened. (58-59 V., c. 30, s. 8.)

Keeping  
open roads  
heretofore  
opened.

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mentary Provisions  
Act (R.S.C. 1906,  
Ch. 99)

10 15.—Except as hereinafter provided, upon the transfer to the Crown in the right of the Province of any road, trail, road allowance, highway or great highway, under this Part, the boundaries and lines thereof, as shown on the plan of the Dominion Government survey thereof, shall thereafter be the true boundaries and lines, until varied under the provisions of this Part. (58-59 V., c. 30, s. 9.)

Boundaries  
of roads  
transferred

16.—All roads, trails, road allowances, highways or great highways of any of the classes referred to in this Part, which are shown on any sectional plan of the City of Winnipeg which has been prepared and confirmed by the Lieutenant Governor of Manitoba in Council under chapter one hundred and forty-two of the Revised Statutes of Manitoba, are hereby transferred to and vested in the Crown in the right of the Province.

Certain roads  
in Winnipeg  
transferred  
to the  
Province

2. The boundaries and lines of all such roads, trails, road allowances, highways and great highways, as such boundaries and lines are shown on any such sectional plan, are hereby declared to be the true boundaries thereof, whether or not they are the true boundaries and lines according to any Dominion Government survey thereof. (58-59 V., c. 30, s. 4.)

Boundaries  
of such  
roads

17.—The Governor in Council may, on the report of the Minister transfer to the Crown in the right of the Province all such roads, trails, road allowances, highways and great highways as are referred to in the last preceding section, and which are shown on any sectional plan of the City of Winnipeg hereafter prepared and confirmed by the Lieutenant Governor of Manitoba in Council under chapter one hundred and forty-two of the Revised Statutes of Manitoba.

Certain  
other roads  
in Winnipeg  
may be  
transferred  
to the  
Province

2. The Governor in Council may declare the boundaries and lines of any such roads, trails, road allowances, highways and great highways, as such boundaries and lines are shown on any such sectional plan, to be the true boundaries and lines, whether or not they are the true boundaries and lines according to any Dominion Government survey thereof. (58-59 V., c. 30, s. 5.)

Declaration  
as to bound-  
aries

18.—Upon the transfer to the Crown in the right of the Province taking place under either of the last two preceding sections, all roads,

Certain  
roads to be  
closed



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mentary Provisions  
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Plan marked 7A  
in the Land  
Titles Office  
approved

Boundaries  
confirmed

Saving

Grants  
confirmed

Persons in  
possession

Entitled to  
grant

trails, road allowances, highways and great highways provided for by this Part, within the limits covered by any such sectional plan, except such roads, trails, road allowances, highways and great highways as are shown on such sectional plans, shall be and remain closed. (58-59 V., c. 30, s. 6.)

19.—The sectional plan numbered 7A, filed in the Land Titles Office of the district of Winnipeg, on the twenty-seventh day of June, one thousand eight hundred and ninety-nine, as number five hundred and fifty-nine, is approved, and the boundaries and lines of all roads, trails, road allowances, highways and great highways, as such boundaries 10 and lines are shown on the said plan, are hereby declared to be the true boundaries thereof, whether or not they are the true boundaries and lines according to any Dominion Government survey thereof. (62-63 V., c. 19, s. 1.)

20.—Nothing in this Part shall affect :—

(A) Any right claimed or set up in any action or proceeding pending in any court of competent jurisdiction on the twenty-second day of July, one thousand eight hundred and ninety-five, or any right theretofore adjudicated upon in an action or proceeding in any such court ; or

20

(B) Sectional plan number seven of the City of Winnipeg, or any road, trail, road allowance, highway, or great highway shown on that plan, or any original trail, road allowance, highway or great highway within the area shown thereon. (58-59 V., c. 30, s. 10.)

PART III.

THE QUIETING OF TITLES.

21.—If required by the owner, any grant of an estate in land in the Province by the Hudson's Bay Company, up to the eighth day of March, one thousand eight hundred and sixty-nine, shall, if such grant is of an 30 estate less than freehold be converted by grant from the Crown into an estate in freehold, and, if the grant is of an estate in freehold it shall be in like manner confirmed. (R.S., c. 48, s. 2.)

22.—Every person who satisfactorily establishes that he, by himself or his servant, tenant or agent, was, or, that those through whom he claims, by themselves, their servants, tenants or agents, were in undisturbed occupancy and in actual peaceable possession of any lands within the Province, on the fifteenth day of July, one thousand eight hundred and seventy, and who made application for letters patent therefor before the first day of May, one thousand eight hundred and eighty-six, 40 shall be entitled to receive such letters patent granting the said land absolutely to him in fee simple : Provided that any such claim to a grant from the Crown is barred as fully and effectually as if it had not been

made, if the claimant in respect thereof did not establish his claim before the first day of November, one thousand eight hundred and eighty-six, or, if the claim had not before the last mentioned date been referred to the Commissioners under the following provisions of this Part. (R.S., c. 48, s. 2.)

Time for claims  
limited

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**23.**—The Governor in Council may, from time to time, issue a commission under the Great Seal, to such person or persons as he sees fit, empowering him or them, or a majority of them, to investigate such cases as are referred to them by the Minister in respect of:—

Commission  
may be  
appointed to  
consider certain  
cases

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mentary Provisions  
Act (R.S.C. 1906,  
Ch. 99)

- 10 (A) All such cases as arise under the provisions of this Act respecting grants made by the Hudson's Bay Company ;
- (B) All cases of adverse or conflicting claims between different persons to lands mentioned in the last preceding section, in respect of which also it has been previously established to the satisfaction of the Minister that there has been undisturbed occupancy, as required in the said section ;

and to report the evidence in respect of such claims, and who is the person to whom, in their opinion, the patent ought to issue for the lands to which the claims respectively relate. (R.S., c. 48, s. 3.)

- 20 **24.**—The Commissioners may, from time to time, make and establish such rules and forms, with regard to any proceedings to be had before them, and to such notices, papers and other documents as are required in the conduct of such proceedings, as to them appear expedient for the better attainment of the purposes of justice. (R.S., c. 48, s. 16.)

Rules and forms  
may be  
prescribed

- 25.**—The sittings of the Commissioners shall be held at the place of the sittings of the county court in each county court division of the Province, and the time and place of such sittings, together with a list of claims to be heard before them, shall be advertised by the Commissioners for a period of three months, in some newspaper in the Province, and they shall give such other notice of the time and place of such sitting as will best tend to inform persons interested in the same. (R.S., c. 48, s. 4.)
- 30

Sittings of the  
Commissioners

**26.**—A list of all lands to which this Part applies, or is believed to apply, shall, from time to time, as is necessary, be prepared by the Surveyor General of Dominion lands ; and such list shall specify the name or names of the person or persons in possession, together with the number of the section, part of section, range and number of township of which the land consists or forms part, or some other adequate description thereof, and of the township or place in which the same lies.

List to be  
prepared

What it shall  
specify

- 40 2. Copies of such list shall be put up in some conspicuous place in the office of each of the county courts of the Province, and in the office of the registrar of each registration and land titles district in the Province, during at least three months before the claim comes to be heard before the Commissioners.

To be posted up

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mentary Provisions  
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Certificate of  
compliance

Fee

Preliminary  
proceedings

Affidavit

Notice

Copy

How claim may  
be preferred

Evidence may  
be viva voce  
or written

Certain  
documents to be  
evidence

Adjournment  
of proceedings

Decision how  
arrived at

3. No claims shall be heard by the Commissioners unless a certificate of compliance with the provisions of this section, from the clerk of such court and from such registrar, is produced to the Commissioners.

4. For each such certificate the clerk of the county court and such registrar may each demand and receive the sum of fifty cents. (R.S., c. 48, s. 6.)

27.—The Commissioners shall not receive or proceed upon any claim until the person, or some one of the persons, by whom or on whose behalf the claim is made has made and produced before the Commissioners an affidavit or affirmation in writing, signed by him, that to the best of his knowledge and belief the claim is well founded, that he is not aware of any adverse claims, and that there is no other person in possession; or if he is aware of any adverse claim, or that there is any other person in possession, that he has, at least one month before the making of such affidavit or affirmation, caused to be served upon the person making, having, or supposed to have such adverse claim, or who is in possession as aforesaid, a notice in writing of his claim and of his intention to bring the claim before the Commissioners at the time appointed by them for hearing the claims of the respective parties. 10

2. A copy of such notice shall be affixed to the affidavit or affirmation. (R.S., c. 48, s. 5.) 20

28.—The claimant, or the heir, devisee or assignee of any claimant, may bring any such adverse or conflicting claim before the Commissioners, either personally or by agent or attorney, and produce before the Commissioners all such documents, proofs and evidence as he has to advance in support of such claim.

2. Such evidence may be given viva voce before the Commissioners, or by written affidavits or affirmations, sworn or affirmed before any one entitled to administer an oath or affirmation in the place where the same is sworn or affirmed. 30

3. All certificates of the Hudson's Bay Company, or of any chief factor of the Hudson's Bay Company, or of the clerk of the executive council of the Province, or copies certified by them respectively of documents in their custody, shall be received in evidence before the Commissioners. (R.S., c. 48, ss. 7 and 8.)

29.—The Commissioners may defer, delay or adjourn the proceedings on any claim brought before them, and may give such further or enlarged time for the production of evidence, or for any other purpose relative to such claim, and for the decision thereon, as they deem expedient for the attainment of the ends of justice. (R.S., c. 48, s. 12.) 40

30.—The Commissioners shall be guided in their proceedings and report by the justice and equity of the case, without regard to legal forms or to the strict letter of the law, or legal rules of evidence.



2. The Commissioners shall report their decision to the Minister, who may, if he thinks fit, thereupon cause letters patent to issue, granting the lands in question to the person who has been reported by the Commissioners to be entitled to the lands; or otherwise, in his discretion, may submit the decision for the consideration and approval of the Governor in Council. (R.S., c. 48, s. 13.)

Effect of  
decision

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mentary Provisions  
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31.—The Commissioners may summon before them, by summons under the hand of any one of them, the claimant or claimants, or any person interested in the case, or any other person whom they deem it expedient to examine as a witness, or whom they have reason to believe to be in possession of any document by the production of which the ends of justice may be better attained; and may require such claimant or person or such witness, to submit to such oral examination upon oath, or to answer on oath and to sign his answers to interrogatories or cross interrogatories in writing, or to produce such books, papers or documents in his possession, as to the Commissioners appear requisite. (R.S., c. 48, s. 9.)

Witnesses may  
be summoned

And required to  
give evidence

32.—The Commissioners may cause such interrogatories or cross interrogatories as they deem requisite to be served upon and answered by any such claimant, person or witness, or any witness whose deposition is produced in evidence before them; and may cause commissions to be issued for the examination of any witness not resident in Manitoba, and for requiring such witness to produce such books, papers or other documents as he has in his possession; and may, in their discretion, delay the proceedings in the case until such evidence and answers have been adduced and given, and returned with the commission. (R.S., c. 48, s. 10.)

Interrogatories

Commissions to  
examine  
witnesses  
abroad

33.—The Commissioners shall have the same power to enforce the attendance of witnesses, and to compel them to give evidence, as is vested in any court of law in civil cases; but no person or witness shall be compelled to answer any question that he would not be compelled to answer in a court of law in a civil case. (R.S., c. 48, s. 11.)

Attendance may  
be enforced

34. No letters patent shall issue on any decision and report of the Commissioners until after the expiration of three months from the time when such report was transmitted to and marked as received by the Minister. (R.S., c. 48, s. 14.)

When letters  
patent may  
issue

35.—If, before the expiration of such three months, the Commissioners or a quorum or majority of them, find reason to believe that such decision and report were obtained by surprise or erroneously made in any respect, and that justice requires that the issuing of the letters patent should be stayed, the Commissioners, or a majority of them, although it is not then the regular period of their sitting, may report accordingly to the Minister, and the issuing of the letters patent shall thereupon be stayed until the

Re-hearing

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mentary Provisions  
Act (R.S.C. 1906,  
Ch. 99)Right to any  
other procedure  
not affected

Commissioners again report upon the case ; and the Commissioners may re-hear the case, or admit any new claim, and may receive or insist upon any new evidence, as to them appears expedient to enable them to do justice in the case ; and they may thereafter decide and report thereon as if no prior report had been made, and with like effect. (R.S., c. 48, s. 15.)

36.—Nothing in this Part contained shall limit the right of the Minister to investigate, or cause to be otherwise investigated than as hereinbefore mentioned, such adverse or conflicting claims as aforesaid, and to cause letters patent to issue therefor to the person appearing to him to be entitled thereto. (R.S., c. 48, s. 17.)

## No. 13.

## No. 13

*An Act to make valid a certain Copy of the Hudson's Bay Company's Plans of Survey, and for other purposes (34 Vict. Ch. 33).*

An Act to make valid a certain copy of the Hudson's Bay Company's plans of survey, and for other purposes (34 Vict., Ch. 33)

[Assented to 3rd May, 1871.]

Whereas the original plans of the surveys of the Hudson's Bay Company on the Red River and the River Assiniboine have been lost, and whereas it is desirable to prevent the mischief arising from such loss, Her Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Manitoba, enacts as follows:—

Preamble

- 10     1.—The copy of the plans of survey now in the possession of the Lieutenant-Governor, shall be identified by the signature of the Lieutenant-Governor, and by the Great Seal of Manitoba. Copy of existing plan to be identified
  
- 2.—The copy so identified shall in all trials and disputes relative to land, have the same force and validity, and be considered as evidence of the same matters as if the same were the original plan. Validity thereof as evidence
  
- 3.—Nothing herein contained shall prevent any party giving in evidence the original plan in case the same shall be discovered. Original plan may be given in evidence
  
- 20     4.—The Lieutenant-Governor may, by Order-in-Council direct that a copy of the registry books kept by the Hudson's Bay Company, in connection with the lands surveyed by them on the Assiniboine and Red Rivers, shall be made by a clerk to be appointed by the Lieutenant-Governor for that purpose. Copy of Company's Register may be made
  
- 5.—The copy so to be made shall be verified as a true copy of the original registry books by the affidavit of the clerk or other person who shall have examined the same and shall be identified by the signature of the Lieutenant-Governor, and the Great Seal of the Province. Copy to be identified by signature of Governor and Great Seal
  
- 6.—Such copy so verified and identified may be used in the same manner, and for the same purposes as the original record books and shall be prima facie evidence to the same extent as if it were the original. Copy to be prima facie evidence
  
- 30     7.—The copy of the registry books so made shall be deposited with the registrar of deeds when appointed, and in the meantime with the Provincial Secretary. Custody of Registry Books



An Act respecting  
plans and land  
register of the  
Hudson's Bay  
Company (C.S.M.  
1880, Ch. 59)

*An Act respecting Plans and Land Register of the Hudson's Bay Company*  
(C.S.M. 1880, Ch. 59).

Copy of existing plans to be  
identified, s. 1.

Validity thereof as evidence, s. 2.

Original plans may be given in  
evidence, s. 3.

Copy of the Co.'s land register  
may be made, s. 4.

Copy to be identified by signature  
of Governor and Seal, s. 5.

Copy to be prima facie evidence,  
s. 6.

Custody of register book, s. 7.

When Act to operate, s. 8.

Act may be cited as "The 10  
"Hudson's Bay Company  
"Land Register Act," s. 9.

Whereas the original plans of the surveys of the Hudson's Bay Company on the Red River and the River Assiniboine have been lost; and whereas it is desirable to prevent the mischief arising from such loss: therefore,

Her Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—

Copy of  
existing plans  
to be identified

**I.**—The copy of the plans of survey now in the possession of the Lieutenant-Governor shall be identified by the signature of the Lieutenant-Governor, and by the Great Seal of Manitoba. (34 V., c. 33, s. 1.) 20

Validity thereof  
as evidence

**II.**—The copy so identified shall, in all trials and disputes relative to land, have the same force and validity, and be considered as evidence of the same matters as if the same were the original plans. (34 V., c. 33, s. 2.)

Original plan  
may be given  
in evidence

**III.**—Nothing herein contained shall prevent any party giving in evidence the original plans, in case the same shall be discovered. (34 V., c. 33, s. 3.)

Copy of  
Company's  
register may be  
made

**IV.**—The Lieutenant-Governor may, by order in council, direct that a copy of the register book kept by the Hudson's Bay Company, in connection with the lands surveyed by them on the Assiniboine and Red Rivers, shall be made by a clerk to be appointed by the Lieutenant-Governor for that purpose. (34 V., c. 33, s. 4.) 30

Copy to be  
identified by  
signature of  
Governor and  
Great Seal

**V.**—The copy so to be made shall be verified as a true copy of the original register book by the affidavit of the clerk or other person who shall have examined the same; and shall be identified by the signature of the Lieutenant-Governor, and the Great Seal of the Province. (34 V., c. 33, s. 5.)

**VI.**—Such copy so verified and identified may be used in the same manner, and for the same purposes, as the original register book, and shall be prima facie evidence, to the same extent, as if it were the original. (34 V., c. 33, s. 6.)

Copy to be  
prima facie  
evidence

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—

**VII.**—The copy of the register book so made, shall be deposited with the registrar of deeds for the county of Selkirk, when appointed, and in the meantime, with the Provincial Secretary. (34 V., c. 33, s. 7.)

Custody of  
registry books

An Act respecting  
plans and land  
register of the  
Hudson's Bay  
Company (C.S.M.  
1880, Ch. 59)

**VIII.**—This Act shall take effect and have operation from the third of May, 1871.

When Act to  
operate

10 **IX.**—This Act may be cited as “The Hudson's Bay Company Land Register Act.”

How Act may  
be cited

ADDITIONAL  
APPENDIX OF  
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—  
No. 15  
—

Excerpts from an  
Act respecting Real  
Property in the  
Province of  
Manitoba  
(52 Vict., Ch. 16)

No. 15.

*Excerpts from an Act respecting Real Property in the Province of Manitoba*  
(52 Vict., Ch. 16).

[Assented to 5th March, 1889.]

Preamble

Whereas, it is expedient to amend and consolidate 48 Victoria,  
Chapter 28, and amendments thereto ;

Therefore, Her Majesty, by and with the advice and consent of the  
Legislative Assembly of Manitoba, declares and enacts as follows :—

\* \* \* \* \*

H.B. Co. Land  
Register, plans  
and surveys

12.—The copy of the Plans of Survey of the Hudson's Bay Company,  
and the copy of the Register book of the Hudson's Bay Company, referred 10  
to in "The Hudson's Bay Company Land Register Act," shall remain  
for safe keeping in the Land Titles Office, at Winnipeg, and shall hereafter  
be under the charge and control of the District-Registrar, as part of the  
official books and instruments of the Land Titles Office at Winnipeg.



## No. 16.

## No. 16

*An Act respecting Plans and Land Register of the Hudson's Bay Company*  
(R.S.M. 1891, Ch. 70).An Act respecting  
plans and land  
register of the  
Hudson's Bay  
Company (R.S.M.  
1891, Ch. 70)

Short Title	...	...	...	...	...	...	...	s. 1.
Evidence and Custody	...	...	...	...	...	...	...	ss. 2-8.
Copies properly identified as evidence, s. 2.	Copy to be identified by signature of Lieutenant-Governor and Seal, s. 5.							
10 Original plans may be given in evidence, s. 3.	Copy to be prima facie evidence, s. 6.							
Copy of the Co.'s land register may be made, s. 4.	Custody of plans and register book, s. 7.							
	From when Act to operate, s. 8.							

Whereas the original plans of the surveys of the Hudson's Bay Company on the Red River and the River Assiniboine have been lost ; and whereas it is desirable to prevent mischief arising from such loss. (C.S.M., c. 59, Preamble.)

Now therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows :—

20

## SHORT TITLE.

1.—This Act may be cited as “ The Hudson's Bay Company Land Register Act.” (C.S.M., c. 59, s. 9.) Short title

2.—A copy of the plans aforesaid, identified by the signature of a Lieutenant-Governor of Manitoba and by the Great Seal of Manitoba, shall, in all trials and disputes relative to land, have the same force and validity, and be considered as evidence of the same matters as if the same were the original plans. (C.S.M., c. 59, s. 1, part, s. 2.) Evidence

3.—Nothing herein contained shall prevent any party giving in evidence the original plans, in case the same shall be discovered. (C.S.M., c. 59, s. 3.) Original plans may be given in evidence

30

4.—The Lieutenant-Governor may by Order in Council direct that a copy of the register book kept by the Hudson's Bay Company, in connection with the lands surveyed by it on the Assiniboine and Red Rivers, shall be made by a clerk to be appointed by the Lieutenant-Governor for that purpose. (C.S.M., c. 59, s. 4.) Copy of Company's register may be made

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No. 16  
—

An Act respecting  
plans and land  
register of the  
Hudson's Bay  
Company (R.S.M.  
1891, Ch. 70)

Copy to be  
identified by  
signature of  
Governor and  
Great Seal

Effect of  
such copy

Where to be  
deposited

When Act came  
into force

5.—The copy so to be made shall be verified as a true copy of the original register book by the affidavit of the clerk or other person who shall have examined the same, and shall be identified by the signature of the Lieutenant-Governor and the Great Seal of the Province. (C.S.M., c. 59, s. 5.)

6.—A copy so verified and identified, either under this or any former statute of this Province, may be used in the same manner and for the same purposes as the original register book, and shall be prima facie evidence to the same extent as if it were the original. (C.S.M., c. 59, s. 6, part.)

10

7.—The copy of the plans of survey of the Hudson's Bay Company and of the Register Book, so made or identified as aforesaid under this or such former statute, shall be deposited, or, if already so deposited, shall remain for safe keeping, in the Land Titles Office at Winnipeg, and shall hereafter be under the control of the District Registrar as part of the official books and instruments of the Land Titles Office at Winnipeg. (C.S.M., c. 59, s. 7, part ; 52 V., c. 16, s. 12.)

8.—This Act, except the seventh section thereof, shall be deemed to have taken effect and to have had operation from the third day of May in the year one thousand eight hundred and seventy-one. (C.S.M., 20 c. 59, s. 8.)

## No. 17.

## No. 17

*An Act respecting Plans and Land Register of the Hudson's Bay Company*  
(R.S.M. 1902, Ch. 76).An Act respecting  
plans and land  
Register of the  
Hudson's Bay  
Company (R.S.M.  
1902, Ch. 76)

Short Title ... .. s. 1

Evidence and Custody ... .. ss. 2-8

Copies properly identified as evidence, s. 2. | Copy to be identified by signature of Lieutenant-Governor and Seal, s. 5.

10 Original plans may be given in evidence, s. 3. | Copy to be prima facie evidence, s. 6.

Copy of the Co.'s land register may be made, s. 4. | Custody of plans and register book, s. 7.  
From when Act to operate, s. 8.

Whereas the original plans of the surveys of the Hudson's Bay Company on the Red River and the River Assiniboine have been lost; and whereas it is desirable to prevent mischief arising from such loss. (R.S.M., c. 70, Preamble.)

Now, therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba enacts as follows:—

## 20 SHORT TITLE.

1.—This Act may be cited as “The Hudson's Bay Company Land Register Act.” (R.S.M., c. 60, s. 1.) Short title

## EVIDENCE AND CUSTODY.

2.—A copy of the plans aforesaid, identified by the signature of a Lieutenant-Governor of Manitoba and by the Great Seal of Manitoba, shall, in all trials and disputes relative to land, have the same force and validity, and be considered as evidence of the same matters, as if the same were the original plans. (R.S.M., c. 70, s. 2.) Evidence

30 3.—Nothing herein contained shall prevent any party giving in evidence the original plans, in case the same shall be discovered. (R.S.M., c. 70, s. 3.) Original plans may be given in evidence

4.—The Lieutenant-Governor may by Order in Council direct that a copy of the register book kept by the Hudson's Bay Company, in connection with the lands surveyed by it on the Assiniboine and Red Copy of Company's register may be made



ADDITIONAL  
APPENDIX OF  
STATUTES

—  
No. 17  
—

An Act respecting  
plans and land  
register of the  
Hudson's Bay  
Company (R.S.M.  
1902, Ch. 76)

Copy to be  
identified by  
signature of  
Lieutenant-  
Governor and  
Great Seal.

Effect of  
such copy

Where to be  
deposited

When Act came  
into force

Rivers, shall be made by a clerk to be appointed by the Lieutenant-Governor for that purpose. (R.S.M., c. 70, s. 4.)

5.—The copy so to be made shall be verified as a true copy of the original register book by the affidavit of the clerk or other person who shall have examined the same, and shall be identified by the signature of the Lieutenant-Governor and the Great Seal of the Province. (R.S.M., c. 70, s. 5.)

6.—A copy so verified and identified, either under this or any former statute of this Province, may be used in the same manner and for the same purposes as the original register book, and shall be prima facie evidence to the same extent as if it were the original. (R.S.M., c. 70, s. 6.) 10

7.—The copy of the plans of survey of the Hudson's Bay Company, and of the register book, so made or identified as aforesaid under this or such former statute, shall be deposited, or if already so deposited, shall remain for safe keeping in the land titles office at Winnipeg, and shall hereafter be under the control of the district registrar as part of the official books and instruments of the land titles office at Winnipeg. (R.S.M., c. 70, s. 7.)

8.—This Act, except the seventh section thereof, shall be deemed to have taken effect and to have had operation from the third day of May in the year one thousand eight hundred and seventy-one. (R.S.M., c. 70, s. 8.) 20

## No. 18.

*An Act to amend "An Act respecting Plans and Land Register of the Hudson's Bay Company" (7-8 Ed. VII, Ch. 22).*

An Act to amend  
"An Act respecting  
plans and land  
register of the  
Hudson's Bay  
Company"  
(7-8 Ed. VII,  
Ch. 22)

[Assented to February 26th, 1908.]

His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—

1.—Chapter 76 of the Revised Statutes of Manitoba, 1902, is hereby amended by adding the following sections:—

10        7A. The copy of books of record in the Dominion Land Office, at Winnipeg, showing the numbers of lots of land in Manitoba, according to the survey thereof by the Hudson's Bay Company, and the corresponding numbers of the same lots or parts of lots, according to the Dominion Government survey, which copy is certified by E. F. Stephenson, Dominion Lands Agent at Winnipeg, to be a true and correct copy of the originals in his office, and which copy is now on file in the Land Titles Office at Winnipeg, as deposit number 548, shall, upon its production in any court, be prima facie evidence that it is such true and correct copy and  
20        prima facie evidence that the land designated by any number according to the Dominion Government survey, is the same land or part of the same land as was formerly designated by the corresponding Hudson's Bay Company survey number, as such corresponding numbers are set out in said deposit number 548.

Production in  
any court of a  
certain copy of  
books of record  
now in Land  
Titles Office at  
Winnipeg to  
be prima facie  
evidence of  
identity of  
lots, etc.

2.—Section 8 of said chapter 76 is hereby amended by striking out the words "seventh section," in the first line thereof, and by inserting in lieu thereof the words "sections 7 and 7A." S. 8 amended

3.—This Act shall come into force on the day it is assented to.

An Act respecting  
plans and land  
register of the  
Hudson's Bay  
Company (R.S.M.  
1913, Ch. 89)

*An Act respecting Plans and Land Register of the Hudson's Bay Company*  
(R.S.M. 1913, Ch. 89).

Whereas the original plans of the surveys of the Hudson's Bay Company on the Red River and the River Assiniboine have been lost; and whereas it is desirable to prevent mischief arising from such loss. (R.S.M., c. 76, Preamble.)

Now, therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—

SHORT TITLE.

10

1.—This Act may be cited as “The Hudson's Bay Company Land Register Act.” (R.S.M., c. 76, s. 1.)

EVIDENCE AND CUSTODY.

Evidence

2.—A copy of the plans aforesaid, identified by the signature of a Lieutenant-Governor of Manitoba and by the Great Seal of Manitoba, shall, in all trials and disputes relative to land, have the same force and validity, and be considered as evidence of the same matters, as if the same were the original plans. (R.S.M., c. 76, s. 2.)

Original plans  
may be given  
in evidence

3.—Nothing herein contained shall prevent any party giving in evidence the original plans, in case the same shall be discovered. (R.S.M., c. 76, s. 3.) 20

Copy of  
Company's  
register may  
be made

4.—The Lieutenant-Governor may by order-in-council direct that a copy of the register book kept by the Hudson's Bay Company, in connection with the lands surveyed by it on the Assiniboine and Red Rivers, shall be made by a clerk to be appointed by the Lieutenant-Governor for that purpose. (R.S.M., c. 76, s. 4.)

Copy to be  
identified by  
signature of  
Lieut.-Gov. and  
Great Seal

5.—The copy so to be made shall be verified as a true copy of the original register book by the affidavit of the clerk or other person who shall have examined the same, and shall be identified by the signature of the Lieutenant-Governor and the Great Seal of the Province. (R.S.M., c. 76, s. 5.) 30

Effect of  
such copy

6.—A copy so verified and identified, either under this or any former statute of this Province, may be used in the same manner and for the same purposes as the original register book, and shall be prima facie evidence to the same extent as if it were the original. (R.S.M., c. 76, s. 6.)



7.—The copy of the plans of survey of the Hudson's Bay Company and of the register book, so made or identified as aforesaid under this or such former statute, shall be deposited, or, if already so deposited, shall remain for safe keeping in the land titles office at Winnipeg, and shall hereafter be under the control of the district registrar as part of the official books and instruments of the land titles office at Winnipeg. (R.S.M., c. 76, s. 7.)

Where to be deposited

ADDITIONAL  
APPENDIX of  
STATUTES

—  
No. 19  
—

An Act respecting  
plans and land  
register of the  
Hudson's Bay  
Company (R.S.M.  
1913, Ch. 89)

8.—The copy of books of record in the Dominion Land office, at Winnipeg, showing the numbers of lots of land in Manitoba, according to the survey thereof by the Hudson's Bay Company, and the corresponding numbers of the same lots or part of lots, according to the Dominion Government survey, which copy is certified by E. F. Stephenson, Dominion lands agent at Winnipeg, to be a true and correct copy of the originals in his office, and which copy is now on file in the land titles office at Winnipeg, as deposit number 548, shall, upon its production in any court, be prima facie evidence that it is such true and correct copy and prima facie evidence that the land designated by any number, according to the Dominion Government survey, is the same land or part of the same land as was formerly designated by the corresponding Hudson's Bay Company survey number, as such corresponding numbers are set out in said deposit number 548. (7-8 Ed. 7, c. 22, s. 1.)

Production in any court of a certain copy of books of record now in Land Titles Office at Winnipeg to be prima facie evidence of identity of lots, etc.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF  
CANADA.

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BETWEEN

THE GOVERNOR AND COMPANY OF  
ADVENTURERS OF ENGLAND TRADING  
INTO HUDSON'S BAY ... APPELLANTS

—AND—

THE ATTORNEYS-GENERAL FOR THE  
DOMINION OF CANADA AND THE  
PROVINCES OF MANITOBA, SASKAT-  
CHEWAN AND ALBERTA ... RESPONDENTS.

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APPELLANTS'  
ADDITIONAL APPENDIX OF  
STATUTES.

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